Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 962

MARTIN M. GOLDMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 963

JACOB P. SHULMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 980

THEODORE GOLDMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED { APRIL 18, 1941. APRIL 18, 1941. APRIL 23, 1941.

CERTIORARI GRANTED OCTOBER 20, 1941.

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UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA,

Appellee,

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN,

Defendants-Appellants.

Statement Under Rule XIII, Subdivision 4.

This action was commenced by the filing of the indictment on February 1, 1940.

The indictment charged that the above named defendants-appellants combined, conspired, confederated and agreed together, and with each other, and with one Samuel I. Kandell, named as a defendant therein, and with divers other persons to the Grand Jurors unknown, to commit certain offenses against the United States, to wit, to violate Section 29 (b) (5) of the National Bankruptcy Act (Title 11, Section 52, United States Code), in that they knowingly and fraudulently caused to be filed a petition in bankruptcy against one Paul Hymowitz and thereafter knowingly and fraudulently attempted to obtain from one Robert Hoffman, one Samuel S. Kolman and said Paul Hymowitz and divers other unknown persons, a sum of approximately $400.00 and promises thereof in consideration of and for acting and forbearing to act in dismissing and causing to be dismissed the said petition in bankruptcy and forbearing to act to oppose and cause to be opposed the dismissal of said petition in bankruptcy.

On the 7th day of February, 1940, the appellants were arraigned and entered pleas of not guilty, and were each admitted to bail in the sum of $500.00.

Prior to the trial a motion was made on behalf of defendants to suppress certain evidence on the ground it was

4 obtained in violation of their Constitutional rights and in violation of Sections 151 and 605 of Title 47, United States Code (Communications Act of 1934). Hon. Henry W. Goddard, before whom said motion came on to be heard, made an order referring same to the Trial Judge for hearing preliminary to the trial proper. In pursuance of said order, a hearing was held before Hon. Sidney C. Mize, on the 15th and 16th days of July, 1940. After the testimony of witnesses and the proofs of the parties were taken the Court made its ruling denying said motion. The trial itself followed immediately thereupon.

5 The trial was commenced before Hon. Sidney C. Mize and a jury on July 16, 1940, and terminated on July 26, 1940.

At the close of the Government's case the indictment was dismissed as to the defendant Samuel I. Kandell and he was discharged.

On July 26, 1940, the jury returned a verdict of guilty as charged as against the remaining defendants.

On the 26th day of July, 1940, sentence was imposed as follows: Each of the defendants was sentenced to eighteen months' imprisonment in a penitentiary, to be designated by the Attorney General.

On the 26th day of July, 1940, Hon. Sidney C. Mize

6 continued the bail of defendants until July 29, 1940, on condition that they take an appeal by July 29, 1940, and the Court fixed bail pending appeal in the sum of $1,000.00 each. On July 29, 1940, defendants-appellants filed their notices and grounds of appeal and gave bail of $1,000.00 each.

On August 19, 1940, Hon. Gaston L. Porterie made an order extending to and including the 15th day of October, 1940, the time of the appellants to file their assignments of error and to settle and file their Bill of Exceptions.

On October 14, 1940, Hon. Harrie B. Chase made a further order extending to and including the 18th day of October, 1940, the time of the appellants to file their

assignments of error and to settle and file their Bill of 7
Exceptions.

On October 17, 1940 a further order was made by Hon. Harrie B. Chase extending to and including October 25, 1940 the time of the appellants to settle and file their Bill of Exceptions.

The appellants present a consolidated transcript of the record upon their separate appeals herein.

No questions were referred to a commissioner, referee or master with reference to any of the appellants.

Indictment.

8

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

* * * * *

Southern District of New York: SS: The Grand Jurors for the United States of America duly empaneled and sworn in the District Court of the United States for the Southern District of New York, and inquiring for said District, upon their oath present:

That, heretofore, to wit, on or about the 24th day of March, 1937, and continuously thereafter until on or about 9
the 13th day of April, 1938, Martin M. Goldman, Theodore Goldman, Jacob P. Schulman and Samuel Irving Kandell the defendants herein, in the Southern District of New York and within the jurisdiction of this court, unlawfully, knowingly and wilfully combined, conspired, confederated and agreed together, and with each other, and with divers other persons to the Grand Jurors unknown, to commit certain offenses against the United States, to wit, to violate Section 29 (b) (5) of the National Bankruptcy Act (Title 11, Section 52 (b) (5), United States Code), that is to say, at the time and place aforesaid, the defendants as aforesaid know-

10 ing that one Paul Hymowitz had executed a general assignment for the benefit of his creditors to Samuel S. Kolman, assignee, and that one Robert Hoffman was attorney for the said Samuel S. Kolman, assignee, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other that they would institute and cause to be instituted a bankruptcy proceeding, to wit, that they would file and cause to be filed a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt; and that they would knowingly and fraudulently receive and attempt to obtain from Robert Hoffman, the attorney aforesaid, Samuel S. Kolman, the assignee afore-
11 said, and Paul Hymowitz, the alleged bankrupt aforesaid, and divers other persons to the Grand Jurors unknown, divers monies, remunerations, compensations, rewards, and advantages, and promises thereof, to wit, a sum of approximately $400, the exact amount being to the Grand Jurors unknown, not properly due and belonging to the said defendants, and promises thereof and certain other monies, property, remunerations, compensations, rewards, and advantages, and promises thereof not more particularly known to the Grand Jurors aforesaid, in consideration of and for acting and forbearing to act in the said bankruptcy proceeding, to wit, for acting to dismiss and cause to be dismissed
12 the said petition in bankrupty and forbearing to act to oppose and cause to be opposed the dismissal of the said petition in bankruptcy.

It was part of the conspiracy aforesaid that Theodore Goldman and Samuel Irving Kandell, two of the defendants aforesaid, claiming to represent creditors, would seek to obtain from Robert Hoffman, the attorney aforesaid, and Samuel S. Kolman, the assignee aforesaid, the appointment of Samuel Irving Kandell, as co-assignee, and of the firm of Goldman, Malter & Goldman, of which Theodore Goldman and Martin M. Goldman, two of the defendants aforesaid,

were partners, as co-attorneys for the assignee aforesaid; 13
and that after this attempt had proven unsuccessful, Jacob P. Schulman, one of the defendants, would file a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt, and that the said petition would be drawn in such a way that the defendants could procure its dismissal.

It was further a part of the said conspiracy that the defendants would knowingly and fraudulently receive and attempt to obtain from Robert Hoffman, the attorney aforesaid, Samuel S. Kolman, the assignee aforesaid, and Paul Hymowitz, the alleged bankrupt aforesaid, a promise that they would consent to a settlement with the creditors of 14.
Paul Hymowitz aforesaid pursuant to which the assignment proceeding would be dismissed and the creditors aforesaid would receive about forty per cent. of their claims; and that the defendants would knowingly and fraudulently receive and attempt to obtain from the said Robert Hoffman a promise to join with the defendants in a sale of the assets of Paul Hymowitz, the alleged bankrupt, and to join with the defendants aforesaid in knowingly and fraudulently stating to the creditors that the price to be received for the assets aforesaid was about $1,500 while the true price at which the defendants would sell to persons to the Grand 15
Jurors unknown the assets of Paul Hymowitz, the alleged bankrupt, was to be higher, to wit, about $1,900; and that the defendants and Robert Hoffman would receive and attempt to obtain the difference between the two sums, to wit, about $400, and that Robert Hoffman, the attorney aforesaid, would promise to join in this plan.

It was further a part of the said conspiracy that in consideration of knowingly and fraudulently obtaining the above-mentioned monies, properties, remunerations, compensations, rewards, advantages and promises thereof from Paul Hymowitz, the alleged bankrupt aforesaid, and Samuel S. Kolman, the assignee aforesaid, and Robert Hoffman,

16 the attorney aforesaid, and divers other persons to the Grand Jurors unknown, the defendants would dismiss and cause to be dismissed the petition in bankruptcy aforesaid, and would fail to oppose the dismissal of the same.

OVERT ACTS.

1. In pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 3, 1937, the defendant, Jacob P. Schulman, signed an involuntary petition in bankruptcy praying that Paul Hymowitz
17 be adjudicated a bankrupt.

2. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court on or about April 5th, 1937, the defendant, Jacob P. Schulman, was present at the United States Courthouse in the City of New York.

3. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 7, 1937, the defendants, Martin M. Goldman and Jacob P. Schulman, met with Robert Hoffman at the office
18 of the defendant, Jacob P. Schulman, at 277 Broadway, in the City of New York.

4. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 14th, 1937, the defendant, Jacob P. Schulman, met with Robert Hoffman at the office of the defendant, Jacob P. Schulman, at 277 Broadway, in the City of New York.

5. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about

April 26, 1937, the defendant Jacob P. Schulman, received from Robert Hoffman a bill of sale signed by Paul Hymowitz covering merchandise and fixtures at 346 Bowery, New York, together with an affidavit of the creditors of the said Paul Hymowitz. 19

6. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 26, 1937, the defendant, Jacob P. Schulman, executed a receipt for a bill of sale and an affidavit of the creditors of Paul Hymowitz.

7. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this Court, on or about the 13th day of May, 1937, the defendant, Samuel Irving Kandell, caused to be mailed a letter to Endicott Johnson Corp., a creditor of Paul Hymowitz, the alleged bankrupt, asking it to accept a forty per cent. settlement of its claim. 20

8. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about the 14th day of May, 1937, the defendants Theodore Goldman and Martin M. Goldman, procured and caused to be procured an order of the United States District Court for the Southern District of New York, dismissing the involuntary petition in bankruptcy praying that Paul Hymowitz be adjudicated a bankrupt. 21

Against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 18, Section 88, United States Code).

JOHN T. CAHILL,
United States Attorney.

Endorsements on Back of Indictment.

22 Feb. 7, 1940—All Defendants pleads. Not Guilty. Bail $500.00 for each defts. Paroled to 4 P. M. to give bail. Defs ordered photographed and fingerprinted. Feb. 19/40 for motions etc. Clancy, J.

March 25, 1940—Martin M. Goldman Pleads Not Guilty. Bail cont'd. Samuel I. Kandell Pleads Not Guilty. Bail cont'd. Mandelbaum, J.

March 26, 1940—Theodore Goldman Pleads Not Guilty. Bail continued. Mandelbaum, J.

July 15, 1940—Trial begun before Mize, J. Preliminary
23 hearing had on motion for Deft Schulman to suppress evidence.

July 16, 1940—Preliminary hearing continued and concluded. Motion to suppress certain evidence denied. Trial continued. Trial cont'd on July 17-18 and 19.

July 22, 1940—The Gov't rests—atty for Defts Theo Goldman, Martin Goldman and Jacob Schulman move to dismiss etc. Motions denied. Atty for Samuel I. Kandell moves to dismiss the indictment as to his client—Motion granted. The trial cont'd on July 23, 24.

24 July 25, 1940—Defendants rest. And renew their former motions to dismiss—Motions denied. The Gov't rests. Summation by Mr. Fielding, atty for deft Schulman.

July 26, 1940—Summation by Mr. Corbin, atty for Mar. & Theo Goldman. Summation by Asst. U. S. Atty Walsh for Gov't. The Court charges the jury who retire at 3:35 P.M. in the custody of a sworn marshal and return at 6:30 P.M.

Verdict—Defts Martin T Goldman, Theodore Goldman and Jacob P. Schulman guilty as charged. Motions to set aside verdicts denied. Motions for a new trial denied.

All defts, Martin T. Goldman, Theodore Goldman and Jacob P. Schulman sentenced to eighteen months in a penitentiary to be designated by the Atty General. Payment of fines of all defts remitted. 25

Bail fixed at $1,000.00 pending appeal as to all defts. All Defts paroled to July 29, 1940 in custody of their respective attys to give bail.

Mize, J.

Docket Entries.

Feb. 1, 1940—Filed Indictment. 26

Feb. 5, 1940—Filed Notice of Appearance of—Philips, Mahoney & Fielding—atty for—Jacob P. Schulman.

" 6, " —Filed Notice of Appearance—Kadel, Sheil & Weiss atty for Theodore Goldman and Martin M. Goldman.

Feb. 7, 1940—Martin M. Goldman Pleads Not Guilty Bail $500)

" 7, " —Theodore Goldman Pleads Not Guilty Bail $500) Paroled 4 P. M. to give bail. 27

" 7, " —Jacob P. Schulman Pleads Not Guilty Bail $500) Defts ordered fingerprinted and photographed 2/19/40 for motions, etc.

" 7, " —Samuel I. Kandell Pleads Not Guilty Bail $500) Clancy, J.

" 7, " —Filed recognizance for Martin M. Goldman —$500—U. S. F. & G. Co. surety.

Docket Entries.

28 Feb. 7, 1940—Filed recognizance for Theodore Goldman—$500—U. S. F. & G. Co. surety.

" 7, " —Filed recognizance for Jacob P. Schulman—$500—U. S. F. & G. Co. surety.

" 7, " —Filed recognizance for Samuel I. Kandell—$500—U. S. F. & G. Co. surety.

" 19 " —Filed Notice of Appearance for Samuel I. Kandell by Samuel J. Siegel and Joseph Selman, attys.

" 23 " —Filed Notice of appearance—George J. Mintzer atty for Samuel I. Kandell.

29

" 23 " —Filed Notice of Appearance—Silver & Bernstein atty for Martin M. and Theodore Goldman.

" 24 " —Filed order extending time of defendants to file a demurrer to and including the 29th day of February, 1940.

Coxe, J.

Mar. 1, 1940—Filed order extending time of defendants to file a demurrer to and including March 4, 1940.

30

Coxe, J.

" 4, " —Filed Demurrer on behalf of Samuel Irving Kandell.

" 4, " —Filed Demurrer on behalf of Martin M. Goldman and Theodore Goldman.

" 13, " —Memo endorsed on Demurrer S. I. Kandell filed 3/4/40 "Demurrer overruled". Mandelbaum, J.

Docket Entries.

Mar. 13, 1940	Memo endorsed on Demurrer as to M. M. Goldman and T. Goldman filed 3/4/40 "Demurrer overruled". Mandelbaum, J.	31
" 25, 1940	Martin M. Goldman Pleads Not Guilty. Bail cont'd. Mandelbaum, J.	
Mar. 25, 1940	Samuel I. Kandell Pleads Not Guilty. Bail cont. Mandelbaum, J.	
" 26, 1940	Theodore Goldman Pleads Not Guilty Bail cont'd. Mandelbaum, J.	32
Apr. 22, 1940	Filed consent of substitution of Harold H. Corbin as atty in place and stead of Edward S. Silver, for defendants Martin M. Goldman and Theodore Goldman.	
May 17, 1940	Filed notice of motion and affidavits for an order to quash, suppress and withhold from the jury all evidence illegally obtained, etc. Memo endorsed:—"This motion is reserved for this trial upon consent of counsel". 5/16/40. Goddard, J.	33
May 17, 1940	Filed affidavit in opposition to motion to quash and suppress the evidence claimed to have been illegally obtained.	
July 15, 1940	Trial of all defts begun before Hon. Sidney C. Mize. Preliminary hearing had on motion of deft. Schulman to suppress evidence.	
" 16, "	—Hearing concluded—Motion denied.	

Docket Entries.

34 July 17, 1940—Trial cont'd.

" 18, " —Trial cont'd.

" 19, " —Trial cont'd.

" 22, " —The Gov't rests—attys for defts—J. P. Schulman, M. T. Goldman, Theodore Goldman move to dismiss etc.—motion denied. Atty for deft. Samuel I. Kandell moves to dismiss—Decision reserved.

" 23, " —Motion to dismiss as to deft. Sam. I. Kandell granted.

35 " 24, " —Trial cont'd. as to M. T. Goldman, Theo Goldman and J. P. Schulman.

July 25/1940 —Defts. rest and renew their former motions to dismiss—Motions denied. The Govt. rests.

Summation by Mr. Fielding, atty. for deft. Jacob P. Schulman.

July 26/1940 —Summation by Mr. Corbin, atty for defts. M. Goldman and T. Goldman.

Summation by Mr. Walsh, atty. for Govt.

36 The Court chargs the jury who retire at 3:35 P.M. in the custody of a sworn court officer, and return at 6:30 P.M.

" " " —Verdict: All defts. Martin Goldman, Theodore Goldman and Jacob P. Schulman guilty as charged.

Motions by all defts. to set aside verdict denied.

Motions by all defts. for a new trial denied.

All defts. Martin T. Goldman, Theo. Goldman and Jacob P. Schulman sentenced to

	eighteen (18) months in a penitentiary to be designated by the Atty-General and fined $25.00. Payment of fines remitted.	37
" " "	—Bail of all defts. set in the amt. of $1000.00 pending appeal and all defts. released in the custody of their respective attys until 7-29-40 to give bail.	
" " "	—Filed judgments as to J. P. Schulman, Theo. and M. M. Goldman. Mize, J.	
July 29/40	—Filed Notice of Appeal of Theodore Goldman and grounds of appeal.	38
July 29/40	—Filed Notice of Appeal of Martin M. Goldman and grounds of appeal.	
July 29/40	—Filed Notice of Appeal of Jacob P. Schulman and grounds of appeal.	
July 29/40	—Filed Bond pending appeal of Theodore Goldman $1000. U. S. F. & G. Co. surety.	
July 29/40	—Filed Bond pending appeal of Martin M. Goldman $1000. U. S. F. & G. Co. surety.	
July 29/40	—Filed Bond pending appeal of Jacob P. Schulman $1000. U. S. F. & G. Co. surety.	39
Aug. 21, 1940	—Filed order extending time of defts. to file assignments of error and to settle and file bill of exceptions to and including Oct. 15, 1940. Porterie, J.	

Judgment—Martin M. Goldman.

40 At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the United States Court House, in the Borough of Manhattan, City of New York on July 26, 1940.

Present: THE HONORABLE SIDNEY C. MIZE, *Judge*.

C. 107-2

U. S. Criminal Code, Section 88, Title 18, U. S. C.

41 Unlawfully Conspiring to Act and Forbear to Act in Bankruptcy Proceedings.

THE UNITED STATES OF AMERICA

—against—

MARTIN M. GOLDMAN

On motion of the United States Attorney, Ordered Sentence.

42 It is thereupon ordered and adjudged that the above named defendant be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a penitentiary For and during the term and period of Eighteen (18) Months and Fined $25. Payment of fine remitted.

Bail fixed at $1,000. pending appeal.

Paroled to July 25, 1940 in custody of counsel to give bail.

S. C. MIZE.
United States District Judge.

COMMITMENT. 43

IN THE

DISTRICT COURT OF THE UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK.

The President of the United States of America
To the Marshal of the United States for the Southern District of New York
and to of the

at

WHEREAS the foregoing judgment and sentence was pronounced against the defendant named therein 44

AND, WHEREAS the Attorney General of the United States has designated the above named institution as the place of confinement where the said sentence shall be served.

NOW THIS IS TO COMMAND YOU, THE SAID MARSHAL forthwith to take and safely transport to said institution and there deliver to the officer in charge thereof the aforesaid defendant together with a copy of this writ; and you the officer in charge of said institution to receive, keep and imprison said defendant in accordance with said sentence, or until said defendant shall be otherwise discharged by due course of law. If said prisoner shall have been committed to a jail or other place of detention to await transportation to the place at which said sentence is to be served, said sentence shall pursuant to law begin on the date on which said defendant was received at such jail or other place of detention. 45

Witness, the Honorable Sidney C. Mize Judge of said Court, and the seal thereof affixed at New York City in said District this 26th day of July, 1940.

GEORGE J. H. FOLLMER,
Clerk.

Judgment—Theodore Goldman.

46

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the United States Court House, in the Borough of Manhattan, City of New York on July 26, 1940.

Present: THE HONORABLE SIDNEY C. MIZE, *Judge*.

C. 107-2

U. S. Criminal Code, Section 88, Title 18, U. S. C.

47 Unlawfully Conspiring to Act and Forbear to Act in Bankruptcy Proceedings.

THE UNITED STATES OF AMERICA

—against—

THEODORE GOLDMAN

On motion of the United States Attorney, Ordered Sentence.

48 It is thereupon ordered and adjudged that the above named defendant be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a penitentiary For and during the term and period of Eighteen (18) Months and Fined $25. Payment of fine remitted.

Bail fixed at $1,000 pending appeal.

Paroled to July 29, 1940 in custody of counsel to give bail.

S. C. MIZE.
United States District Judge.

COMMITMENT.

IN THE

DISTRICT COURT OF THE UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK.

The President of the United States of America
To the Marshal of the United States for the Southern District of New York
and to of the
at

WHEREAS the foregoing judgment and sentence was pronounced against the defendant named therein

AND, WHEREAS the Attorney General of the United States has designated the above named institution as the place of confinement where the said sentence shall be served.

NOW THIS IS TO COMMAND YOU, THE SAID MARSHAL forthwith to take and safely transport to said institution and there deliver to the officer in charge thereof the aforesaid defendant together with a copy of this writ; and you the officer in charge of said institution to receive, keep and imprison said defendant in accordance with said sentence, or until said defendant shall be otherwise discharged by due course of law. If said prisoner shall have been committed to a jail or other place of detention to await transportation to the place at which said sentence is to be served, said sentence shall pursuant to law begin on the date on which said defendant was received at such jail or other place of detention.

Witness, the Honorable Sidney C. Mize Judge of said Court, and the seal thereof affixed at New York City in said District this 26th day of July, 1940.

GEORGE J. H. FOLLMER,
Clerk.

Judgment—Jacob P. Schulman.

52 At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the United States Court House, in the Borough of Manhattan, City of New York on July 26, 1940.

Present: THE HONORABLE SIDNEY C. MIZE, *Judge*.

C. 107-2

U. S. Criminal Code, Section 88, Title 18, U. S. C.

53 Unlawfully Conspiring to Act and Forbear to Act in Bankruptcy Proceedings.

THE UNITED STATES OF AMERICA

—against—

JACOB P. SCHULMAN

On motion of the United States Attorney, Ordered Sentence.

54 It is thereupon ordered and adjudged that the above named defendant be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a penitentiary For and during the term and period of Eighteen (18) Months and Fined $25. Payment of fine remitted.

Bail fixed at $1,000. pending appeal.

Paroled to July 29, 1940 in custody of counsel to give bail.

S. C. MIZE,
United States District Judge.

COMMITMENT. 55

IN THE

DISTRICT COURT OF THE UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK.

The President of the United States of America
To the Marshal of the United States for the Southern District of New York
and to of the
at

WHEREAS the foregoing judgment and sentence was pronounced against the defendant named therein 56

AND, WHEREAS the Attorney General of the United States has designated the above named institution as the place of confinement where the said sentence shall be served.

NOW THIS IS TO COMMAND YOU, THE SAID MARSHAL forthwith to take and safely transport to said institution and there deliver to the officer in charge thereof the aforesaid defendant together with a copy of this writ; and you the officer in charge of said institution to receive, keep and imprison said defendant in accordance with said sentence, or until said defendant shall be otherwise discharged by due course of law. If said prisoner shall have been committed to a jail or other place of detention to await transportation to the place at which said sentence is to be served, said sentence shall pursuant to law begin on the date on which said defendant was received at such jail or other place of detention. 57

Witness, the Honorable Sidney C. Mize Judge of said Court, and the seal thereof affixed at New York City in said District this 26th day of July, 1940.

GEORGE J. H. FOLLMER,
Clerk.

Notice of Motion to Suppress Evidence.

58

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Docket #C 107-2.

UNITED STATES OF AMERICA,

Plaintiff,

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

59 Defendants.

PLEASE TAKE NOTICE that on the affidavit of Jacob P. Shulman duly verified the 22nd day of April, 1940, the affidavit of Harry Raynor duly verified the 4th day of April, 1940, the affidavit of Albert E. Frost duly verified the 4th day of April, 1940, the affidavit of George Fetherston duly verified the 10th day of April, 1940, and on all the proceedings heretofore had herein, including the indictment heretofore found, the undersigned will move this Court on the 29th day of April, 1940, at the Criminal Part thereof,
60 held in Room 318 of the United States Court House, Foley Square, Borough of Manhattan, City of New York, at 10:30 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, for an order to quash, suppress and withhold from the jury all evidence illegally obtained, directly or indirectly, or delivery to the defendant of any documents, records or other proof obtained by illegal means, or in the alternative, to furnish the defendant with a transcript or duplicate record of any evidence obtained in the manner or form as set forth in the moving affidavits, and

or such other and further relief as to the Court may be 61
eemed just and proper.

Dated, New York, April 22nd, 1940.

Yours, etc.,

PHILLIPS, MAHONEY & FIELDING,
Attorneys for Defendant,
Jacob P. Shulman,
Office and P. O. Address,
51 Chambers Street,
New York City. 62

o:

Hon. John T. Cahill,
United States Attorney,
U. S. Court House,
Foley Square, New York City.

63

Affidavit of Jacob P. Shulman in Support of Motion.

64 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Docket #C 107-2.

UNITED STATES OF AMERICA,

Plaintiff.

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

65

State, City and County of New York—ss.:

JACOB P. SHULMAN, being duly sworn, deposes and says:

I am an attorney and counsellor-at-law, having been admitted to the Bar of the State of New York on the 16th day of November, 1925, and ever since that time have been practicing my profession.

On the 2nd day of February, 1940, a Grand Jury sitting in this Court filed an indictment against Martin M. Goldman, Theodore Goldman, Samuel Irving Kandell and myself, alleging a conspiracy to violate Section 29(b) (5) of the National Bankruptcy Act (Title 11, Section 52(b) (5), United States Code).

66

All defendants pleaded not guilty to that indictment and presently are on bail awaiting trial.

My professional conduct has at no time ever been challenged, impugned or criticized, despite an active practice in both State and Federal Courts in this jurisdiction.

I maintain an office for the transaction of business at 270 Broadway, Borough of Manhattan, New York City.

From March 1933 to May, 1939, I was a tenant in

premises known as 277 Broadway, Borough of Manhattan, 67
New York City, occupying rooms 1509-10, consisting of a waiting room and two private office rooms.

Martin M. Goldman and Theodore Goldman are attorneys admitted to the Bar of the State of New York for many years, and presently and always have been in good standing in their profession. Irving Kandell is not an attorney.

The indictment alleges that knowing that Paul Hymowitz had executed a general assignment for the benefit of his creditors to Samuel S. Kolman, as assignee, and that one Robert Hoffman was attorney for the said Samuel S. Kolman, assignee, that we unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together that 68
we institute and cause to be instituted a bankruptcy proceeding, and attempt to obtain from Robert Hoffman, the said attorney, Samuel S. Kolman, the said assignee, and Paul Hymowitz, the alleged bankrupt, remunerations, compensations, rewards and advantages in the sum of approximately $400. That as part of the conspiracy we would act in concert to have the said petition in bankruptcy dismissed and cause the same to be dismissed and forbearing to act to oppose and cause to be opposed the dismissal of the said petition in bankruptcy.

The indictment further alleges that as part of the con- 69
spiracy that Theodore Goldman and Samuel Irving Kandell, two of the defendants, claiming to represent the creditors, would seek to obtain from Robert Hoffman, the said attorney and Samuel S. Kolman, the said assignee, the appointment of Samuel Irving Kandell as co-assignee, and of the firm of Goldman, Malter & Goldman, of which Martin M. Goldman and Theodore Goldman were partners, as co-attorneys for the assignee, and that after that attempt had proven unsuccessful, your deponent, Jacob P. Shulman would file a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt and that the said petition would

70 be drawn in such a way that the defendants could procure its dismissal.

One of the Overt Acts alleged in the indictment and designated as Overt Act No. 3, is as follows:

> "3. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 7, 1937, the defendants MARTIN M. GOLDMAN and JACOB P. SCHULMAN, met with Robert Hoffman at the office of the defendant, JACOB P. SCHULMAN, at 277 Broad-
71 way, in the City of New York."

That while preparing the case for trial it was deemed advisable to investigate any and every source of information to ascertain what evidence existed, if any, to support the alleged Overt Acts alleged in the indictment and of the facts and circumstances involved in this entire proceeding.

In the course of those investigations three persons were interviewed who have made statements under oath which prove beyond doubt that some of the evidence obtained by the Government involving Overt Act numbered 3 and which undoubtedly will be presented at the trial of this criminal
72 proceeding, was obtained by illegal and unlawful means.

Attached hereto and made a part of this application is an affidavit of Harry Raynor, duly verified the 4th day of April, 1940. Raynor was the superintendent of the office building at 277 Broadway and at the time that deponent maintained his offices in rooms 1509-10.

On or about April [illegible] 1937, as appears from the said affidavit, Raynor was visited about 10 o'clock in the evening by two men asserting that they were attached to the Federal Bureau of Investigation and that they had had a previous talk with one Albert E. Frost, who was at that time a night engineer at 277 Broadway, in which they had requested

Frost to permit them, without the knowledge of deponent, 73
to enter deponent's private offices and install a dictaphone machine equipment in that room and certain other parts of the same apparatus in an adjoining room 1508, which was then unoccupied, but that permission to do so had been refused.

The visit to the Raynor home was made for the purpose of requesting that he, Raynor, as superintendent of the building, issue orders to the night engineer Frost that permission be given for this installation. Raynor did give those instructions and the dictaphone system was installed in deponent's private law offices in the night time after business hours wholly without his knowledge until he was so in- 74
formed of that incident on the 4th day of April, 1940.

Attached hereto is an affidavit of Albert F. Frost verified the 4th day of April, 1940. He was an engineer at 277 Broadway, Borough of Manhattan, City of New York, at that time, and in April 1937 was assigned to night watch for the hours between 4 P. M. and midnight. That affidavit recites that two men visited him about 9 o'clock of an evening in April, and wanted to go up to the 15th floor without identifying themselves. He refused to permit such action. The next evening between 10 P. M. and 1 A. M., the same two men appeared with a third man subsequent 75
to a telephone call received by Frost from Mr. Raynor, the superintendent, who instructed him to honor their request. The affidavit further states that Frost accompanied the three men who then identified themselves as attached to the Federal Bureau of Investigation. Frost at the request of said agents opened deponent's offices, room 1509-16, and these three men entered the room and were there for some time.

There can be no question of what the purpose of the visit of these persons were inasmuch as the affidavit of

76 said Frost states that they carried with them dictaphone machines and wiring equipment.

Deponent respectfully refers to the Frost affidavit for the details as to how the dictaphone was rigged up in deponent's room and how it was carried through the baseboard of the wall to the adjoining room.

These Federal agents had no right or authority to demand from the superintendent of the building the right of access to deponent's private offices and such entry, unknown to deponent, is a violation of his rights.

Attached hereto marked Exhibit A is a copy of instructions by the Attorney-General dated March 15, 1940, to
77 the Federal Bureau of Investigation prohibiting the use of wire-tapping or any other method of entrapment in the gathering of evidence. Any alleged evidence obtained by the Government as a result of the illegal installation of dictagraph devices in deponent's private offices, was so obtained by oppressive and illegal means. That the Government attaches importance to the evidence so obtained, is evident by the fact that it charges specifically as Overt Act numbered 3, a conference in deponent's office on the day following the installation of the dictaphone apparatus.

Deponent respectfully asks that an order be entered herein
78 suppressing any and all evidence by the Government where the same was obtained by improper and illegal methods. That the acts as alleged herein and in the supporting affidavits are in violation of the constitutional rights of the defendant and of the others who are likewise defendants named in the indictment.

In order that the content of the affidavits attached herewith and written out in longhand, may be more readily readable, typewritten copies of them have been affixed to this application. Likewise attached to this affidavit and

marked Exhibit B is a copy of the indictment hereinbefore 79
referred to.

JACOB P. SHULMAN.

Sworn to before me this
22nd day of April, 1940.

MARY EUCHARIA BUSER,
Notary Public, Queens County.
Queens Co. Clk's No. 285 Reg. No. 456.
N. Y. Co. Clk's No. 142 Reg. No. 2B179.
Commission expires March 30, 1942.

EXHIBIT A.

80

OFFICE OF THE ATTORNEY GENERAL

Washington, D. C.

March 15, 1940.

ORDER NO. 3343

As of this date the provision of the manual governing the operations of the Federal Bureau of Investigation, which was adopted in 1931 on order of the Attorney General, and which reads as follows, is superseded,

> WIRE TAPPING: Telephone or telegraph wires shall not be tapped unless prior authorization of the 81
> Director of the Bureau has been secured.

In its place and stead there is hereby reinstated the provision of the manual which prevailed until 1931:

> UNETHICAL TACTICS: Wire tapping, entrapment, or the use of any other improper, illegal, or unethical tactics in procuring information in connection with investigative activity will not be tolerated by the Bureau.

ROBERT H. JACKSON,
Attorney General.

EXHIBIT B.

82

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

* * * * * *

Southern District of New York: SS: the Grand Jurors for the United States of America duly empaneled and sworn in the District Court of the United States for the Southern District of New York, and inquiring for said District, upon their oath present:

That, theretofore, to wit, on or about the 24th day of March, 1937, and continuously thereafter until on or about
83 the 13th day of April, 1938, MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL the defendants herein, in the Southern District of New York and within the jurisdiction of this court, unlawfully, knowingly, and wilfully combined, conspired, confederated and agreed together, and with each other, and with divers other persons to the Grand Jurors unknown, to commit certain offenses against the United States, to wit, to violate Section 29(b)(5) of the National Bankruptcy Act, (Title 11, Section 52(b)(5), United States Code), that is to say, at the time and place aforesaid, the defendants as aforesaid knowing that one Paul Hymowitz
84 had executed a general assignment for the benefit of his creditors to Samuel S. Kolman, assignee, and that one Robert Hoffman was attorney for the said Samuel S. Kolman, assignee, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other that they would institute and cause to be instituted a bankruptcy proceeding, to wit, that they would file and cause to be filed a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt; and that they would knowingly and fraudulently receive and attempt to obtain from Robert Hoffman, the attorney aforesaid, Samuel S. Kolman, the assignee aforesaid, and Paul

Exhibit B.

Hymowitz, the alleged bankrupt aforesaid, and divers other persons to the Grand Jurors unknown, divers monies, remunerations, compensations, rewards, and advantages, and promises thereof, to wit, a sum of approximately $400, the exact amount being to the Grand Jurors unknown, not properly due and belonging to the said defendants, and promises thereof and certain other monies, property, remunerations, compensations, rewards, and advantages, and promises thereof not more particularly known to the Grand Jurors aforesaid, in consideration of and for acting and forbearing to act in the said bankruptcy proceeding, to wit, for acting to dismiss and cause to be dismissed the said petition in bankruptcy and forbearing to act to oppose and cause to be opposed the dismissal of the said petition in bankruptcy. 85 86

It was part of the conspiracy aforesaid that THEODORE GOLDMAN and SAMUEL IRVING KANDELL, two of the defendants aforesaid, claiming to represent creditors, would seek to obtain from Robert Hoffman, the attorney aforesaid, and Samuel S. Kolman, the assignee aforesaid, the appointment of SAMUEL IRVING KANDELL, as co-assignee, and of the firm of Goldman, Malter & Goldman, of which THEODORE GOLDMAN and MARTIN M. GOLDMAN, two of the defendants aforesaid, were partners, as co-attorneys for the assignee aforesaid, and that after this attempt had proven unsuccessful, JACOB P. SCHULMAN, one of the defendants, would file a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt, and that the said petition would be drawn in such a way that the defendants could procure its dismissal. 87

It was further a part of the said conspiracy that the defendants would knowingly and fraudulently receive and attempt to obtain from Robert Hoffman, the attorney aforesaid, Samuel S. Kolman, the assignee aforesaid, and Paul Hymowitz, the alleged bankrupt aforesaid, a promise that they would consent to a settlement with the creditors of

Exhibit B.

88 Paul Hymowitz aforesaid pursuant to which the assignment proceedings would be dismissed and the creditors aforesaid would receive about forty per cent. of their claims; and that the defendants would knowingly and fraudulently receive and attempt to obtain from the said Robert Hoffman a promise to join with the defendants in a sale of the assets of Paul Hymowitz, the alleged bankrupt, and to join with the defendants aforesaid in knowingly and fraudulently stating to the creditors that the price to be received for the assets aforesaid was about $1,500, while the true price at which the defendants would sell to persons to the Grand Jurors unknown the assets of Paul
89 Hymowitz, the alleged bankrupt, was to be higher, to wit, about $1,900; and that the defendants and Robert Hoffman would receive and attempt to obtain the difference between the two sums, to wit, about $400, and that Robert Hoffman, the attorney aforesaid, would promise to join in this plan.

It was further a part of the said conspiracy that in consideration of knowingly and fraudulently obtaining the above-mentioned monies, properties, renumerations, advantages and promises thereof from Paul Hymowitz, the alleged bankrupt aforesaid, and Samuel S. Kolman, the assignee aforesaid, and Robert Hoffman, the attorney aforesaid, and divers other persons to the Grand Jurors unknown,
90 the defendants would dismiss and cause to be dismissed the petition in bankruptcy aforesaid, and would fail to oppose the dismissal of the same.

OVERT ACTS.

1. In pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 3, 1937, the defendant, Jacob P. Schulman, signed an involuntary petition in bankruptcy praying that Paul Hymowitz be adjudicated a bankrupt.

Exhibit B.

2. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court on or about April 5th, 1937, the defendant, Jacob P. Schulman, was present at the United States Courthouse in the City of New York. 91

3. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 7, 1937, the defendants, Martin M. Goldman and Jacob P. Schulman, met with Robert Hoffman at the office of the defendant, Jacob P. Schulman, at 277 Broadway, in the City of New York. 92

4. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this Court, on or about April 14th, 1937, the defendant, Jacob P. Schulman, met with Robert Hoffman at the office of the defendant, Jacob P. Schulman, at 277, Broadway, in the City of New York.

5. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 26, 1937, the defendant Jacob P. Schulman, received from Robert Hoffman a bill of sale signed by Paul Hymowitz covering merchandise and fixtures at 346 Bowery, New York, together with an affidavit of the creditors of the said Paul Hymowitz. 93

6. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 26, 1937, the defendant, Jacob P. Schulman, executed a receipt for a bill of sale and an affidavit of the creditors of Paul Hymowitz.

7. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New

Exhibit B.

94 York and within the jurisdiction of this court, on or about the 13th day of May, 1937, the defendant, Samuel Irving Kandell, caused to be mailed a letter to Endicott Johnson Corp., a creditor of Paul Hymowitz, the alleged bankrupt, asking it to accept a forty per cent. settlement of its claim.

8. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about the 14th day of May, 1937, the defendants Theodore Goldman and Martin M. Goldman procured and caused to be procured an order of the United States District Court for the Southern District of New York, dismissing the involuntary
95 petition in bankruptcy praying that Paul Hymowitz be adjudicated a bankrupt.

Against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 18, Section 88, United States Code).

JOHN T. CAHILL,
United States Attorney.

96

Affidavit of Harry Raynor in Support of Motion.

97

State of New York,
County of Greene—ss.:

HARRY RAYNOR, being duly sworn, deposes and says:

I was superintendent of the office building at 277 Broadway, Borough of Manhattan, New York City; I was such superintendent for fifteen years continuously prior to some time in May, 1937.

That from about March, 1933 to at least May, 1937 and for some time thereafter, Jacob P. Shulman was a tenant in said office building, occupying rooms 1509-1510 in said building; said offices consisted of a waiting room and two 98
private office rooms.

That adjacent to rooms 1509-1510 was room 1508; room 1508 consisted of an outer waiting room and two small private offices; that during the period aforementioned, and particularly in the month of April, 1937, room 1508, consisting of the offices aforementioned, was vacant and had been so vacant, for several years prior thereto.

That in April, 1937, I lived with my wife in a three room apartment, second floor, in a small house on Elderts Lane, Borough of Brooklyn, New York City. That on or about April 5, 1937, at about 10 P. M., I was visited by two men 99
in my said apartment. These two men said they were from the Federal Bureau of Investigation. Federal men; that they had spoken to Al Frost, the night engineer of said office building, earlier the same evening; that they had asked Mr. Frost to permit them to put in a dictaphone machine in rooms 1508 and 1509-1510; that Mr. Frost refused to give them such permission but referred them to me —the superintendent of the building. I asked them for their badges and they showed them to me; the badges showed that they were Federal investigators and I was satisfied that they were men from the Federal Bureau of In-

100 vestigation. They told me that there was to be a meeting in Mr. Shulman's office the next day or so and it was necessary for them to have a dictaphone machine wired to his office so the conversation to go on at the meeting could be recorded; they asked me for my permission to wire up such dictaphone machine that night, after midnight, and said that the device would be put in the vacant office, room 1508, and connected to room 1509-1510. Since they were government men, I assumed they had a right to do this and I then phoned, in their presence, to Mr. Frost, the night engineer at the building, to permit these men to instal the talking and listening devices. These two men said "Thank you"
101 to me and left.

The next morning, I went to Room 1508 at about 9 to 10 A. M. and examined what was done. I found that a dictaphone machine had been installed in the closet of one of the private offices nearest to Mr. Shulman's private office room; to that machine there were several wires connected which I felt with my own hands which I saw run through the hole in baseboard from which the steam pipes ran through from room 1508 to rooms 1509-1510. I mentioned to Mr. Frost that same evening that I had noticed the dictaphone machine installed in 1508, with all the
102 wiring, and he said that he had let these two men into the building the night before, at around midnight, pursuant to the authority which I had given him over the phone and he too had seen the machine and wiring installed when the installation had been done.

I do not believe that the dictaphone machine and its equipment remained in room 1508 more than a few days thereafter.

Rooms 1508 and 1509-1510 were always locked, particularly after regular office hours and entry could not be had to these offices without a key; in this instance Mr. Frost had the key that would open the locks on the outer doors

to these offices and I believe that Mr. Frost opened these offices with his key for these two government men. 103

I read the foregoing statement, consisting of three pages, including this last page, and all the statements contained by me are absolutely true of my own knowledge.

HARRY RAYNOR.

Sworn to before me this
4th day of April, 1940.

IVA E. CAMMER,
Notary Public. 104

Affidavit of Albert E. Frost in Support of Motion.

State of New York,
County of Rockland—ss.:

ALBERT E. FROST, being duly sworn, deposes and says:

For twenty-eight years before August 26, 1937 I was engineer at the building at 277 Broadway, Borough of Manhattan, New York City.

In April, 1937 I was assigned on the night watch, between 4 P. M. and midnight. One evening, early that month, at about 9 P. M. two men came in to the lobby of the building and asked whether they could go up to the fifteenth floor. One man was about 5′ 7″ or 5′ 8″, dark complexion and heavy built, the other was taller and of light complexion, both being in their thirties, according to my impression. I refused to let them go up, told them that I could not allow strangers upstairs. They did not identify themselves; they left the building. 105

The next evening at about 10-11 P. M. the same two men and another man came to the building; this time either Mr. Raynor came with them or had telephoned to

106 me that it was proper for me to allow them to go upstairs and put in a dictaphone in rooms 1508 and 1509-1510, that they were F.B.I. men. The men themselves told me that they were from the Federal Bureau of Investigation.

Acting upon orders of Mr. Harry Raynor, the superintendent of the building, on the second visit—on the second night, I rode up these three men in the elevator to the fifteenth floor and with the key that I had, I opened the outer doors of rooms 1508 and 1509 and these three men entered these rooms. These three men took up with them a dictaphone machine, its wiring equipment and they started to instal the machine and draw the necessary wires from
107 room 1508 through the hole in the baseboard of the wall between that room and 1509, along the 1¼" steam pipe, to the steam radiator in room 1509, to which was attached a device like one which is used to talk into, that device being behind the radiator in room 1509, and the machine or dictaphone being on the floor of room 1508, with ear attachments.

These three men worked about an hour that night, then went out for a sandwich, and came back shortly and resumed working that night. I left that night a little after midnight and left these men working in rooms 1508 and 1509.

108 On the sheet used for night visitors to the offices on the upper floors, I made a notation that these three men came in that night, with the date and hour of their arrival. I also made a notation of this visit in a black book which I kept in a desk in the engine room, which was left there when I left my job in August 1937.

These three men had no means of entering these two offices, without my key which I used to open them on the authority and orders of Mr. Raynor.

I told the man who relieved me that night, whose name I do not remember, to say nothing about the visit and work of these three men to anybody. The only ones who

knew about the entire affair were Mr. Raynor, myself and my relief man; possibly also Oscar Lindholm with whom I discussed the matter but who is now dead. The next day I briefly discussed the matter with Mr. Raynor by telling him that these three men worked long into the night in rigging up and wiring this dictaphone in these rooms. 109

In that month, April 1937, room 1508 was vacant and rooms 1509-1510 were occupied by Jacob P. Shulman and his employees or associates. I never told Mr. Shulman about the foregoing affair and, of course, never obtained his consent to the opening of his offices for the purpose aforementioned. I acted on Mr. Raynor's orders alone. 110

I read the foregoing statement and it contains all the facts that I know took place on this subject.

ALBERT E. FROST.

Sworn to before me this
4th day of April, 1940.

E. HUBBARD JOLLIFFE,
Notary Public.
Commission expires March 30, 1941.

111

Affidavit of George Fetherston in Support of Motion.

112 State of New York,
Richmond County.

GEORGE FETHERSTON, being duly sworn, deposes and says:

That from December, 1932 to March 26, 1940, I was employed in the office building at 277 Broadway, Borough of Manhattan, New York City; up to about July, 1937, my work was to clean the public halls and the empty offices from the 11th to the 17th floors of the building; Barbara Saradowski did the cleaning of the occupied offices on those floors.

That in early part of April, 1937, at about 11 P. M.
113 I noticed the lights on in Room 1508 and I asked Albert Frost, the night engineer why those lights were lit. He said that he allowed some Government men to go into that room to instal a dictaphone, and that it was all right for them to work there.

That night, Albert Frost left at about 11:55 P. M. and left Tom Siame in charge of the building, as the relief engineer and night man; he worked from midnight until 8 A. M. of the following day.

At about 12:30 A. M., the same evening, Tom Siame asked me to open the door for the two Government men be-
114 cause they had come back from a sandwich or light meal and that his—Siame's—key was not available. I thereupon used my key to open Room 1508 and the two men entered. The two men stayed on for about ¾ of an hour and left. One of these men was short and stocky and the other taller and light complexioned,—both in their early thirties.

After these Government men left that morning, I was curious to see a dictaphone machine and went into Room 1508 to see it; the machine consisted of a black box, about 10" x 12" x 10", with a case which I thought contained three dry cells, and a set of earphones on top of the box; all of these were in the closet in that room and there were

wires attached to the machine which led to the baseboard of the wall between 1508 and 1509, underneath the 1¼" steam pipe and the ¼" return pipe. 115

Room 1508 at that time was a vacant office and 1509 was occupied as the office of Jacob P. Shulman.

The next night, at about 11 P. M. I again noticed the lights on in Room 1508 and I spoke to Albert Frost about it; Mr. Frost said they, the Government men, were there again and said that I should not disturb them. At about 1:40 A. M. Tom Siame told me to finish my coffee quickly, so that he could go to sleep, because the Government men had just left 1508 and there was nobody left in the building.

Tom Siame left the job at the building at about April 11, or 12, 1937 and I became the night relief man and continued to do the porter work upstairs. When I became such night relief man, it was my job to ask Albert Frost who was in the building, whether the Government men were again working in 1508, to which Mr. Frost replied that these men were not there any more. About a week or a week and a half after Tom Siame left his job, as previously stated, Albert Frost told me one night that the Government men had taken the dictaphone out of 1508. From the first night when I saw the dictaphone machine, I never had occasion to go into Room 1508 to see it again. 116

Albert Frost, the night engineer, worked from 4 P. M. to 12 midnight; Tom Siame worked from 12 midnight to 8 A. M. When I worked either as porter or as night relief man and porter, my hours were from 11 P. M. to 8 A. M.; when I was night relief man, my hours were from 12 midnight to 8 A. M. 117

I became night relief man and porter after Tom Siame left, and I continued so for about 1½ weeks thereafter. Then I became the night relief man and I continued in that job until December, 1937 when I was promoted to mainte-

Endorsement on Back of Motion Papers to Suppress Evidence.

118 nance man during the day, but shifting hours every two weeks.

GEORGE FETHERSTON.

Sworn to before me this
10th day of April, 1940.

Jos. J. CORONATA,
Notary Public.
Richmond County.
119 Commission expires March 30, 1940.

Endorsement on Back of Motion Papers to Suppress Evidence.

This motion is reserved for the trial upon consent of counsel.

HENRY W. GODDARD,
D. J.

120 5/16/40.

Affidavit of Harold P. Turner in Opposition to Motion.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

Plaintiff,

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

tate of Florida,
ounty of Dade,
ity of Miami—ss.:

HAROLD P. TURNER, being duly sworn, deposes and says:

I am a Special Agent of the Federal Bureau of Investigation.

On the night of April 6, 1937, I and Special Agent J. W. Ransom, also of the Federal Bureau of Investigation, installed in Room 1508 of the office building at 277 Broadway, Borough of Manhattan, City of New York, apparatus to make it possible to overhear conversations taking place in the adjacent rooms, to wit, Rooms 1509-1510.

No part of the apparatus installed was situated in Rooms 1509-1510. Use was made of an existing hole where a pipe ran through the baseboard to conceal a microphone. The microphone was placed in this aperture between the two outer surfaces of the wall separating Room 1508 from Rooms 1509-1510. The apparatus installed was solely for listening in on conversations taking place in Rooms 1509-1510. No telephone or telegraph wires could have been

124 tapped with it nor was it ever intended to tap telephone or telegraph wires with it.

(sgd) HAROLD P. TURNER.

Sworn to before me this
Third day of May, 1940.

(sgd) RUTH DUAY,
Notary Public,
State of Florida at Large.
Comm. exp. Dec. 31, 1942.

125

Testimony.

UNITED STATES DISTRICT COURT;

SOUTHERN DISTRICT OF NEW YORK.

C 107-2.

UNITED STATES OF AMERICA

—against—

126 MORTON GOLDMAN, THEODORE GOLDMAN, JACOB SCHULMAN and SAMUEL IRVING KANDELL.

Before: HON. SIDNEY C. MIZE, *District Judge.*

New York, July 15, 1940.
12.15 p. m.

APPEARANCES: 127

JOHN T. CAHILL, Esq., United States Attorney, for the Government; Bruno Schachner, Esq., and John C. Walsh, Esq., Assistant U. S. Attorneys, of Counsel.

PHILLIPS, MAHONEY & FIELDING, Esqrs., Attorneys for Defendant Schulman; Warren C. Fielding, Esq., of Counsel.

HAROLD CORBIN, Esq., and E. J. BENNETT, Esq., Attorneys for Defendants Morton and Theodore Goldman.

GEORGE J. MINTZER, Esq., Attorney for Defendant Kandell.

The Court: What is the motion? 128

Mr. Fielding: If the Court please, perhaps a little explanation might be in order, to give you an idea what this motion is. These defendants—three of them are attorneys and one is a merchant—were indicted for an alleged conspiracy of the bankruptcy laws. That indictment was handed down late February or early March, and on the 4th of April, pursuant to an investigation which the defendants made, we learned that from two witnesses who are presently in court, that the offices of one of these defendants was opened without his permission in the night 129
time by agents of the Federal Government, who installed a dictograph apparatus in the defendant's room as to one end of it, and wires leading from the listening device in the defendant's office, running through the wall where ear phones or some other method of receiving information was set up in the rooms adjacent to the offices of the defendant. As soon as we learned that information we made a motion to suppress all evidence thus obtained on the ground that it had been obtained in an illegal manner.

130 The matter came on to be heard before Judge Goddard. Subsequently, when we were filing briefs and I was filing a reply affidavit, it was suggested by Judge Goddard that the matter be held in abeyance and that the judge holding the trial should be apprised of the situation and then give heed to our request at this time for a preliminary hearing on those facts.

We have the witnesses in court and ready to proceed on that basis before we go into the trial of the action. I understand from the cases that that is a proper procedure.

131 The Court: Yes. I think that is proper. Is there any objection to that procedure, Mr. District Attorney?

Mr. Schachner: No objection to the procedure, sir. Of course the fact that I am not objecting to the procedure is not to be construed as admitting the legal sufficiency of the facts alleged.

The Court: Yes, I understand that. Very well. We will hear the testimony, then, upon the suppression of that part of the evidence that is claimed to have been unlawfully obtained.

132 Mr. Fielding: Mr. Raynor.

HARRY RAYNOR, called and sworn as a witness for the defendant Schulman, testified as follows:

Direct examination by Mr. Fielding:

Q. Mr. Raynor, what is your occupation? A. Superintendent of the building.

Q. Of what building? A. 277 Broadway.

Q. And were you acting in that capacity in 1937, prior to May 1st? A. I was.

Q. Do you know the defendant Jacob Schulman? A. I do. 133

Q. is he a tenant in that building? A. He was.

Q. And what room did he occupy as his offices? A. He had 1509 and 10.

Q. And where was room 1508 so far as it lay in connection with rooms 1509-10? A. It was adjoining 1509.

Q. Was that room occupied? A. No.

Q. Now do you recall any circumstance, a little unusual, in the early part of April 1937? A. Oh, yes, I do.

Q. In relation to the visit to you made by a Federal investigator; will you state what transpired? A. Well, there was two Federal investigators came to my house. 134

Q. Where was that? A. That was in Elderts Lane.

Q. Where is that, Brooklyn? A. Brooklyn.

Q. Yes. What time did they come there? A. To the best of my recollection, around nine or half past nine in the evening.

Q. When did you know they were Federal officers? A. I asked them—they told me what they were there for.

Q. What did they tell you? A. They told me that they wanted to get into Mr. Schulman's office and that they were Federal agents and they would like to get in there.

Q. Did they exhibit any authority? A. I asked them for their badges, to show me their badges, and they did. 135

Q. And you were satisfied that they were what they represented themselves to be? A. After talking to them for a little while I was satisfied that they were Government agents.

Q. Then what did you do? A. I told them that I would call up the night engineer and instruct him to let these men into Mr. Schulman's office.

Q. Did you do so? A. I did.

Q. And who was the night engineer to whom you gave that authority? A. Albert Frost.

136 Q. Is he in court? A. He is.

Q. Now, some time afterwards, when you returned to the building, did you go into rooms 1509-10? A. I did.

Q. When did you go in those rooms? A. The following morning.

Q. And did you make an inspection of the room? A. I did.

Q. Did you see anything in the room other than the usual office equipment? A. In the ante office there was wires on the floor and some sort of an instrument in the closet that did not belong there.

Q. Did you follow the lead of the wire? A. I did.

137 Q. And how did you follow it? A. I got ahold of it. It was hard to see owing to the color, and I picked it off the floor and I followed it to the corner of the room where a steam pipe goes through the baseboard.

Q. Into Schulman's office? A. Into 1509.

Q. Did you go into room 1509? A. I went into 1509, felt where it came out of the hole and along the pipe and then I didn't follow it no further.

Q. You saw the wire, however, coming through the aperture of the wall and into Schulman's office? A. I saw it go through and I felt it after it was through.

138 Q. Did you have Mr. Schulman's permission to do this? A. What is that?

Q. Did you have the permission of Mr. Schulman to do this? A. Oh, no, I did not.

Q. Did you say anything to him about it? A. I did not.

Q. Did you give instructions to anybody as to whether or not he was to be informed? A. No.

Mr. Fielding: Your witness.

Cross examination by Mr. Schachner: 139

Q. Mr. Raynor, you testified you were the superintendent of the building at 277 Broadway, did you not? A. That is right.

Q. Are you still the superintendent? A. No, sir, I am not. Shortly after I was laid off, discharged.

Q. About how much later? A. The middle of May.

Q. That is about a month and a half later? A. I presume about that. I couldn't give you exact figures.

Q. In your own mind, Mr. Raynor, did you connect your discharge shortly after these incidents transpired with the fact that the Federal officers had been there? A. Well, 140
I said this, that I had no other cause or thought, know what else could happen because my work had always been satisfactory.

Q. And since you had eliminated everything else you came to the conclusion that for some reason or other, because these officers had been there, you were discharged, is that right? A. Well, in my opinion, I felt that way.

Q. And did you develop a grudge, would you say, against these Federal officers? A. Oh, absolutely no; no, because I wasn't sure anything like that did happen.

Q. But had you been sure you would have developed a grudge, is that right? A. I don't think so; of course I 141
ain't able to work much anyhow any more.

Q. Now, Mr. Raynor, you say that you looked around in room 1508, did you not? A. I did.

Q. How frequently did you go into room 1508 to find out what was there? A. Oh, in reference to previous times, you mean?

Q. Yes, before that. A. Well, when an office is vacant, it is very seldom we go in except to clean it up about once every two weeks, clean up the dust, I mean.

Q. Did you go in personally to clean up the dust? A. Oh, no; sent somebody in mostly.

142 Q. So that if you found anything there you cannot really be sure that Federal officers put it there, isn't that right? A. In this case I can.

Q. You can. You are sure. Now tell us what you found there that was in room 1508? A. I found the wires on the floor.

Q. On the floor? A. On the floor. 1508 was divided into two small offices and the wires come out of the left hand office around into the right hand office and through the partition.

Q. That does not really tell us what you found there. Did you find any objects there apart from wires? A. Well, 143 in the closet there was some sort of an instrument, a box, anyhow. I don't know what was in it. I didn't look.

Q. So you found a box in the closet?. A. I saw it in there, yes.

Q. Now will you tell us how big that box was? A. I couldn't say, not very well, because I didn't pay very much attention to it.

Q. Oh, you did not pay much attention to that box? A. No. I saw it there.

Q. For all you know, it might have been an empty box that might have been thrown away by somebody, is that right? A. Well, no, it couldn't be that very well. 144

Q. Did you try to open it to see whether or not it was empty? A. No, I didn't.

Q. You don't know whether or not it was empty? A. I don't know what was into it.

Q. Well, did it have anything on it to indicate that it belonged to the Federal Government? A. On that part I didn't pay any particular attention to.

Q. So you really have no definite knowledge whether or not that box was in any way related to those wires that you saw? A. Well, yes. The wires was connected to it.

Q. Oh, the wires were connected to the box? A. Yes.

Q. How were the wires connected to the box? A. Why, I didn't examine it. I just saw the wires leading up to the box. 145

Q. You mean they were near the box, is that it? A. To the box.

Q. Did they go into the box? A. Why, they didn't go into the box probably, but had a connection there.

Q. Now we would appreciate it— A. This part of it here, how it was connected, so that I won't say for sure about.

Q. Yes. Now we would appreciate it here if you would only tell us those things which you are fairly and reasonably sure of and which you saw yourself? A. That is what I am trying to do. 146

Q. So you did not see the wires yourself going into the box, isn't that right? A. Going into the box?

Q. Yes? A. They went—no. I seen them up as far as the box.

Q. You saw them somewhere near the box, isn't that right? A. Yes.

Q. Tell us again where the box was? A. In the closet on the right hand side—left hand side of the room located on Chambers Street.

The Court: Just a minute, Mr. District Attorney. The clerk informs me that some of the jurors have come into the courtroom. The jurors are excused until two o'clock. If there are any jurors here, it might be heard by some of the jurors. I mean some of the jurors might be called upon to try this case, so I am going to request all jurors, if there be any in the courtroom, kindly withdraw from the courtroom. 147

(Talesmen step out of the courtroom.)

The Court: You may proceed.

148 Q. Now you say in further following the wires, you found that they led to somewhere near a steam pipe, is that right? A. That is right.

Q. Will you tell us just where that steam pipe was? A. That steam pipe was in the baseboard of the wall between 1508 and 1509.

Q. Was there a hole next to the steam pipe? A. To let the pipe through, yes.

Q. Yes. And these wires led through the hole, is that it? A. That is it.

Q. And you followed them on the other side in room 1509? A. I felt them there, yes.

149 Q. You testified to that? A. Yes.

Q. You say you felt the wires? A. Yes.

Q. What made you think that those were the same wires? A. Because there were no other wires going through there.

Q. You saw them coming out of the hole, is that it? A. I saw them going in in 1508 and I felt them where they came out of 1509.

Q. Oh, you felt them where they came out? A. Yes.

Q. You tell me you felt them. Why didn't you see them? A. I didn't feel like getting down on my knees just at that time.

150 Q. Was it simpler to feel them than to see them? A. I just was doing it through curiosity's sake, that is all. If I had known that anything was coming of it I would have been more particular.

Q. Now having felt those wires, you cannot be really sure that what you felt were the wires coming out of the hole? Isn't it possible that you felt something else? A. I am pretty sure it wasn't a quarter of an inch pipe.

Q. That is quite true, that you could be sure of, but can you be sure that it wasn't some other type of wire? A. Yes, I am sure it was that kind of wire. I am sure it was the same according to the feel.

Q. Well, why are you so sure? A. Because the sense of feeling told me that. 151

Q. What was peculiar about the way that wire felt that you could be so sure? A. It was a twisted wire.

Q. Isn't twisted wire used for a great many other purposes? A. Not bare—well, yes, for a great many other purposes, but we don't never use it bare in a building.

Q. And that was bare twisted wire, is that it? A. Yes.

Q. Now, Mr. Raynor, originally you made an affidavit relating to all the events that we are now talking about? A. To the best of my knowledge, yes.

Q. In that affidavit you did not mention anything about your visit to room 1509, or did you? A. I don't know whether I did or not. 152

Q. Now I have your affidavit here, and I am sure that Mr. Fielding will concede that in the original affidavit there is no mention of it?

Mr. Fielding: In his first affidavit there is no such statement.

Q. Will you tell the Court why you had neglected to mention the fact that you were in room 1509 in your first affidavit? A. Well, it is probably because I didn't think of it.

153

Q. Tell me, weren't you questioned rather thoroughly about these incidents? A. No, no. I wasn't—I wasn't pinned down on anything. I just told my story as offhand as it was, to the best of my knowledge, and that is all there was to it.

Q. Now the second affidavit that you made out mentions that incident. Will you tell the Court, please, what happened between the first affidavit and the second affidavit that brought that incident back to your mind? A. Well, I don't know any more than it just happened to come to me, that I did go in that.

154 Q. The fact that element had become important was not pointed out to you by Mr. Schulman's attorneys? A. Not that I can recall.

Q. Can you recall that it was pointed out to you? A. It wasn't.

Q. You are definite on that, that it was not? A. I am pretty positive.

Q. It is just one of those things that you happened fortunately to remember? A. Well, it is just like any other story you would tell. You tell it over two or three times and it will always be a little different but always the same point.

155 Q. Tell me, Mr. Raynor, what were your office hours? A. Well, my office hours were from nine to five, or at any other time my services were required.

Q. When would you come to the office? A. Oh, I usually got in around half past eight.

Q. Around half past eight? A. Sometimes eight o'clock. I didn't have any particular time to get in.

Q. Now, Mr. Raynor, in your affidavits you state that your examination of room 1508 was conducted between the hours of nine and ten? A. Well, that is probably correct.

Q. You mean you swore to something that is only prob-
156 ably correct? Aren't you sure of it? A. Why, yes, I am positive of it.

Q. You are absolutely positive? A. Yes.

Q. That it was between nine and ten? A. Yes.

Q. And will you please explain to the Court how you, between the hours of nine and ten, when I assume Mr. Schulman was in his office, conducted an examination of his office and felt for wires?

Mr. Fielding: I object to the question, to presume something not in the record.

The Court: I will sustain the objection to that part of it.

Q. Was Mr. Schulman there while you examined the wires? A. No. That particular morning I got in early on account of the agents being up. 157

Q. But you swore in your affidavit that you conducted the examination between nine and ten. A. So I did, so I did.

Q. Mr. Raynor, aren't you assuming that you came in earlier solely because you seemed to think you couldn't explain the fact that you were in Schulman's office otherwise? A. If I have made that statement, that wasn't correct because I know that I was in that office and I did examine those wires before—before office hours, and if I made that statement and swore to it, why then I have slipped a little on time, that is all. 158

Q. So, Mr. Raynor, do I take it that you are susceptible to slipping when you make statements under oath? A. No; as a rule I am pretty positive of what I am saying.

Q. But occasionally you slip, is that right? A. Oh, well, in that case, yes; maybe I did.

Mr. Schachner: That is all.

Redirect examination by Mr. Fielding:

Q. Mr. Raynor, you used your own pass key to let these Federal men into the vacant room, didn't you? A. Yes, sir. 159

Q. And it was your pass key that let them in? A. It was my pass key that let them in.

Q. And they went into the room? A. Yes.

Q. That is, the vacant room? A. Yes.

Q. Did you go into the other room, Schulman's office, with these men? A. Not then.

Q. Did you at any time later? A. No, not for any purpose—for them.

Q. Now you were asked to put down as best as you could recollect the course of the wiring which you saw? A. Yes.

160 Q. I show you a photostat of a diagram which you made and applied to the layout of the office building, and ask you if this is what you prepared (handing)? A. That is a correct layout of the floor.

Q. I call your attention— A. Yes, that is about the way the wires were.

Q. That is the best of your recollection? A. Yes, and here is the closet where the box was (indicating) and here is where the wires was. That is a correct diagram.

Q. And that was prepared by you some three years after the happening of this event, is that correct? A. What is
161 that?

Q. This incident occurred in April of 1937? A. Yes.

Q. You prepared that this year, did you not, that diagram on the yellow sheet of paper? A. Well, this is an original.

Q. That is a photostat of a yellow paper that you prepared yourself? A. Yes, yes.

Q. And that is a true and correct copy of what you prepared? A. That is a true, correct statement or copy of whatever I prepared.

Mr. Fielding: I offer it in evidence.

(Marked Petitioner's Exhibit 1.)
162

Mr. Fielding: That is all.

Recross examination by Mr. Schachner:

Q. One more question, Mr. Raynor. Will you tell the Court whether there is any connection between the fact that you lost your job shortly after the Federal officers came in and the fact that your memory is slippery on these matters so casual? A. Well, that was only a thought in my mind. I had nothing to make me feel sure that it was so, and it just happened so. Maybe it was a coincidence. I had been on the job for fourteen years and my services

was perfectly satisfactory. I never had no complaints, 163
neither with the tenants or with the owner.

Mr. Schachner: That is all.

ALBERT E. FROST, called as a witness on behalf of the defendant Schulman, being duly sworn, testified as follows:

Direct examination by Mr. Fielding:

Q. Where do you live, Mr. Frost? A. Congers, New York, Rockland County.

Q. What was your occupation in April of 1937? A. 164
Engineer, stationary engineer.

Q. Where? A. 277 Broadway, Broadway-Chambers Building.

Q. Speak up so that the Court can hear you? A. 277 Broadway, Broadway-Chambers Building.

Q. And was that the building in which the defendant Schulman had an office at that time? A. Yes, sir.

Q. And the room number was? A. 1509-10.

Q. And adjoining his office was a vacant room, 1508? A. 1508.

Q. Do you recall any unusual circumstances that occurred on the 5th or 6th of April 1937, when you were on 165
duty in the building? A. Well, these Federal men—

Q. Do you remember something unusual? A. I do.

Q. Would you state what it was? A. Well, these Federal men came into the building—

Q. Now just a minute. How did you know they were Federal men? A. Well, Mr. Raynor, the superintendent, brought them down to the engine room, between five and five-thirty that second evening, and the previous evening I refused to allow them to go up into the office when they wanted the key.

Q. Were they the same men, to your recollection? A.

166 Yes, sir, and I told them that Mr. Raynor, the superintendent, had the authority to give the keys, that I could not do so, so they got in touch with Mr. Raynor. I got the address for them and they went out and saw him. The following night, I believe it was the 6th of April, Mr. Raynor brought them down to the engine room again, between five and five-thirty and introduced them to me and gave me the authority to allow them to go into Mr. Schulman's office, 1509, and whatever they had to attend to, and they came in later on in the evening and brought their equipment with them and the wires, and I took them up on the freight elevator to the 15th floor. I opened the
167 empty office, 1508, put on the lights, they brought their equipment and wires in there, and then I opened the adjoining office, 1509.

Q. Which was Mr. Schulman's offices? A. Mr. Schulman's offices, J. P. Schulman, put the lights on and they all came in, the three of them.

Q. Did you go in with them? A. I did, and they looked around and I took them into the private office on the Chambers Street side, and they asked me where would be the best place to bore a hole in the wall, they wanted to run some wires through, so I pointed to an aperture
168 in the baseboard near the corner, an inch and a quarter steampipe line, and a quarter inch returning line running through, connecting up the radiator on the other window on Chambers Street side, and they thought it was O. K.; they would run the wires through there, which they did, and the wires were placed on the floor, under the carpet, under the baseboard and over and behind the radiator. I have been mentioning the fact that it was an ideal location for it.

Q. Did they tell you what it was? A. Well, they didn't tell me, only that they wanted to make this installation, so I told them that between ten-fifteen and eleven o'clock

the cleaners came in and they would have to work fast so they wouldn't be detected, so I got a call, I had to take the car down and bring up some of the cleaners to the fifth floor, and I came up again and I asked them how they were making out and they said all right, they were through, and then I don't think we spent more than twenty or twenty-five minutes in the office, to my recollection, and I put the lights out, shut the door, and they went into the adjoining vacant office, and then I left them, went about my business. I never seen the equipment in the empty office or never seen the men that evening after that. 169

Q. Did you see the apparatus that was installed in Schulman's office? A. It was a sort of listening device, small listening device, I should judge about two and a half or three-quarter inches, something like that. 170

Q. And to that were connected wires? A. The mechanic had a coil of wires on his arm; they uncoiled this through the aperture in the baseboard where the steam line runs through from the adjoining vacant office.

Q. Now what part of Mr. Schulman's office was that part of that device fixed, as a chair or desk or radiator or what? A. To my knowledge and from what I have seen, it was behind the radiator on the floor; the radiator was on the Chambers Street side of the building.

Q. Now these men could not have gotten into that office, Mr. Schulman's office, without your letting them in? A. Absolutely not. 171

Q. Did Mr. Schulman give you permission to let them in? A. He did not.

Q. Did you ever tell Mr. Schulman about the time of the happening of the incident, that such a happening had transpired? A. I did not.

Q. Was there any warning given by anybody not to mention it to Mr. Schulman? A. Only Mr. Raynor wanted me not to say anything to anybody but to pass the information

172 along to my relief who came in at midnight, that these Federal men were in that office and to keep out and not to go in there at all, and the cleaner was given the same instructions.

Mr. Fielding: Your witness.

Cross examination by Mr. Schachner:

Q. Mr. Frost, you say Mr. Raynor came down and introduced these men to you, is that right? A. Yes, sir, absolutely.

Q. Did you read Mr. Raynor's affidavit that he filed for
173 the purposes of this motion? A. I did not.

Q. Mr. Raynor says in that affidavit that he telephoned you from his home and asked you to extend permission? A. He said that was O. K., to let them go into the office.

Q. Will you tell us whether he telephoned or whether he came down personally? A. Well, I am not positive about that, whether he telephoned, but I know he gave me the permission that night, between five and five-thirty, but it was the previous night when I sent them out there to his home.

Q. But Mr. Raynor said he telephoned about nine o'clock at night? A. Well, the only place where he could get a
174 call at that hour of the night would be the cafe which may have been open at the time.

Q. That isn't really strictly in answer to my question. I just want you to tell us whether he came down in person or whether he telephoned. In other words, I want you to tell us whether he is wrong or you are wrong? A. Well, they came over from his home that night and had the permission from him to allow them to go up to this office.

Q. Yes, that we agree upon, but I want you to tell me whether he is right when he said he telephoned you or you were right when you say he came down in person?

A. Well, if I remember correctly, I got the call down in the 175
cafe. They were open a little late that evening.

Q. So Mr. Raynor is right. He telephoned you? A. Yes.

Q. Is that right? A. That is how I got the call.

Q. And when you testified a little while ago that he came down in person, you were in error? A. Well, that was the early part of the evening.

Q. You mean first he came down— A. Yes, sir.

Q. And introduced them to you? A. Exactly.

Q. And then he telephoned you again and said "Well, do what I told you in the afternoon—" A. I might add—

Q. Let me finish— "do what I told you to do in the afternoon?" Is that right? A. Yes. 176

Q. He didn't have anything else to say in that telephone conversation? A. No, sir; that it was perfectly O. K. to let them go ahead. That was the night before, on the 5th of April.

Q. Was it his regular habit to give you instructions twice, once by coming down in person and another time by telephone? A. Not exactly.

Q. Now this was an exception to his usual practice? A. That is right.

Q. Were you surprised to hear him telephoning you? A. Well, they were—I did want to get some definite information so that I would know what to do when they came 177
back.

Q. If you will just answer my question. Were you surprised to hear him telephone you? A. Not at all.

Q. Did you tell him "Why, you told me to do that this afternoon. Why do you bother telephoning me again?" A. I did not mention that fact.

Q. Mr. Frost, in your affidavit in connection with this case you mentioned something about records which you made of the occasion, did you not? A. I did.

Q. Now will you repeat for us just what records you

178 made? A. Well, there was a record made on a sheet of paper, like a pad attached to a clip, that was hanging on the grille work of the elevator. We put down the time when anyone came in and when they left the building, a sort of a visitors' list.

Q. Did you see that record again recently? A. No, I did not.

Q. All right. Did you make any other record? A. I did. We had a small book in the desk drawer in the engine room where we kept records of incidents of this kind for future reference in case anything should come up why we could refer to it.

179 Q. What else was in that book apart from incidents of this kind? A. Well, there was various information there.

Q. Was it a big book? A. No, a sort of a square book, about ten inches square.

Q. And you don't remember what other information was in there? A. Well, there was quite a lot of it in there. I do not recall now.

Q. You don't remember anything else that was pat in there? A. I suppose I could if I refresh my memory, but we had that book—

Q. You made regular entries every day in that book did you not? A. It was a book, I recall now, that we kept
180 the name and address of the other members connected with the engine room staff, and other information, and why they left, and so forth.

Q. Is it a book something like this (indicating)? A. Well, not quite as large; only square.

Q. A book like this perhaps (indicating)? A. No, it has a black cover.

Q. Well, this is black. A. I mean it was all black.

Q. What? A. All black. It didn't have that red around the edges.

Q. It didn't have that? A. And it was square.

Q. How about this book (indicating)? A. No, sir, that 181
is not it.

Q. Do you recognize this book? A. I do. I made many an entry in it. That is our log, engine room log book.

Mr. Schachner: I offer it in evidence.

Mr. Fielding: Mark it for identification.

(Marked Government's Exhibit A for identification.)

Mr. Fielding: May I see that, please.

(Same handed to counsel.)

Mr. Schachner: With your Honor's permission 182
I would like to ask a few other questions while counsel is examining this book.

The Court: Very well.

Q. You say today distinctly that you never saw any equipment in room 1508, is that true? A. I saw it when they brought it off the elevator and took it through the hall and through the empty office and placed it on the floor, but I never went in there after that.

Q. Now you say you saw something placed on the floor as they put equipment in, but you never actually saw anything connected in room 1508, is that right? A. No, not 183
in 1508, because I didn't have occasion to go in there.

Q. You are absolutely certain of that? A. Only that the stuff was brought in there, that is all.

Q. No, no. Now just a minute, if you just answer my question. You are absolutely certain that you did not see anything connected in room 1508? A. No, sir.

Q. Now will you tell to the Court then how it comes that in one of your affidavits you swore that you saw a dictaphone with head pieces connected— A. No. I did not.

Q. In room 1508. A. No, sir, I did not.

Q. So that when you swore to that in your affidavit

184 you were not swearing to the truth, is that right? A. What I swore to was—

Mr. Corbin: Quote the language of the affidavit. You do not have it before you.

Q. (Reading) "and the machine or dictaphone being on the floor of room 1508 with ear attachments." I will read you the whole paragraph, if you like:

"These three men took up with them a dictaphone machine, its wiring equipment, and they started to install the machine and draw the necessary wires from room 1508." A. That is correct.

185 Q. (Continuing) "through the hole in the baseboard of the wall between that room and 1509 along the 1¼" steam pipe to the steam radiator in room 1509 to which was attached a device like one which is used to talk into, that device being behind the radiator in room 1509, and the machine or dictaphone being on the floor 1508 with ear attachments." A. I seen it on the floor. That is all I seen, but I didn't enter the office.

Q. Then your explanation is you saw it as the agents brought it in? A. And laid it on the floor and brought the wires in there. It was about three boxes, if I remember correctly.

186 Q. Well, where were you standing when you saw that? A. In the hall.

Q. In the hall? A. While they were bringing it in there.

Q. Did they leave the door open? A. Exactly, yes, sir.

Q. For everyone to see? A. Well, there was nobody around at the time on that floor.

Q. Now, how long did you stand in the hall? A. Well, just long enough to let them get it in there and they came out and they opened up the door in 1509.

Q. Let me see. Did they carry that equipment in a bag? A. No, they carried it with light handles attached to it.

Q. And where were the ear pieces? A. I didn't see that 187
part.

Q. You didn't see that part? A. No.

Q. You never saw any ear pieces? A. Only the device that was placed in room 1509, that is all.

Q. Mr. Frost, if you will kindly just tell me whether you saw any ear phones, that will be enough? A. No, sir, I did not.

Q. You never in your life saw an ear phone around there, is that right? A. Only a listening device.

Q. Now if you just say that you didn't see an ear phone? A. No.

Q. That is right, you never saw one? A. I judged it 188
was in the box, that is all.

Q. Just a minute. You never saw one, isn't that right? A. That is right.

Q. Now, why did you swear in the affidavit that there was one around there? A. Well, I judge it was in the box, in the equipment there, part of the equipment. I didn't see it opened up.

Q. Just one minute. How do you tell from the outside of a box that it has ear phones inside? A. I can't answer that question.

Q. Actually you can't tell, isn't that right? A. That is 189
right.

Q. Now, probably because you heard about all these matters your imagination supplied some details— A. No, no.

Q. Which was not actually so? A. No.

Q. Isn't that right? A. No, sir.

Q. For instance, these earphones which you mention here, those are purely imaginary, are they not? A. Well, I didn't see the boxes opened.

Q. So you don't know anything about earphones? A. Well, only I understood it was a dictaphone that was to

190 be installed, according to what Mr. Raynor told me. That is why they were there. That was their purpose, to install this dictaphone, and naturally there should be a listening device and earphones attached.

The Court: Well, gentlemen, at this point we will take a recess until two o'clock.

Mr. Schachner: Yes, at two o'clock.

(Recess until 2:00 p. m.)

AFTERNOON SESSION.

191 ALBERT E. FROST, resumed the stand.

Cross examination continued by Mr. Schachner:

Q. You testified, Mr. Frost, did you not, that you made a record of this visit in some book? A. Yes, sir.

Q. And that book—was that a book kept regularly for the purpose of the building? A. Private information.

Q. Now will you tell us what kind of private information you required in the boiler room and noted in that book? A. Well, there has been matters that took place in the building.

Q. Such as what? A. Well, some untold circumstance, 192 where a watchman let somebody into an office or there was any disturbance or anything, and we was on duty acting in that capacity. We acted as watchmen after he was let out. We kept a record of those things.

Q. Why did you put those things in a book labeled "Private Information"? A. Well, just for future reference in case anything turned up, we could give the information to the superintendent of the building if he called for it.

Q. I show you Government's Exhibit A for identification. Will you tell us whether you ever saw that before? A. I certainly have. I have made the entries in it.

Q. And does this book contain all sorts of miscellaneous 193
information? A. No, sir, not that one.

Q. That does not? A. No, sir.

Q. It is not this book? A. It is not the book. That is only an engine room log book, engine room records of operation.

Q. And you cannot tell us why those entries were not made in this book? A. We didn't put them in that book just for that reason. We kept it in a separate book. That is my own idea originally because I kept the records.

Q. Do you know where that book is now? A. I beg your pardon?

Q. Do you know where that book is now? A. I do not. 194

Q. What were your hours, Mr. Frost? A. Well, eight hours a day. We worked three watches, changed around, swing from one watch to another: 8 to 4, 4 to 12, and 12 to 8 in the morning, but during this incident, if that is the watch you are referring to, I worked on the afternoon watch and the midnight watch, alternating each week.

Q. You alternated each week? A. Yes, during that latter period.

Q. So you were there from—— A. Four to twelve.

Q. From four to twelve? A. From four to twelve one week and from 12 to 8 the following week, and then we swung back again, I and the other relief man, the other 195
engineer.

Q. Can you tell us possibly with the aid of Government's Exhibit A for identification, what watch you worked during that week? A. I can. I was on the four to twelve.

Q. You were on the four to twelve watch? A. Yes, sir.

Q. Now you testified before, did you not, that you did not see any equipment except possibly something that the agents might have left lying around loose in the room in 1508; isn't that right? A. Well, the three boxes as I described had the equipment in it and the wire.

196 Q. Oh, there were the three boxes? A. That is what I saw them bring in.

Q. You saw them bring in three boxes. That is all you know about 1508? A. I did not know what the contents were.

Q. All right, that is quite true. Now tell us what you saw in Schulman's office? A. Well, I seen this listening device.

Q. What is a listening device? A. Well, it is an object about two and a half, two and three-quarters in size (indicating), something like an ear phone I called it at that time. I thought it was an ear phone, but it is just a listen-
197 ing device and the wires were attached to that. That is what was placed on the floor.

Q. Where? A. In 1509.

Q. That is, in Schulman's office? A. Yes, sir.

Q. Room 1509? A. Yes, sir.

Q. You saw an ear phone? A. I don't call it an ear phone——a listening device.

Q. Well, something that looked like an ear phone? A. Yes, this one single piece of mechanism.

Q. A single piece of mechanism that looked like the thing in a telephone that you put to the ear? A. Well, it looked that way to me.

198 Q. Oh, it did? A. Yes. I had never seen a dictaphone before.

Q. From the fact that it looked that way to you you assume it looks that way to everybody else? A. Well, I understood it was a listening device for a dictaphone outfit.

Q. Now, who told you that? A. Well, Mr. Raynor, the superintendent, told me that these men were to go in there with a dictaphone outfit to collect evidence. That is all I know.

Q. I don't want you to tell us what somebody else told you. I would like you to tell us just what you saw and all

you saw was the device that looked like an earphone? A. And the wire. 199

Q. And wire? A. And the wire which ran through this aperture in the baseboard.

Q. Now let us see. Where did the wire start? A. From the vacant office, 1508.

Q. That you don't know, because you have testified that you did not see anything in 1508 but you could have seen it possibly coming out outside in 1509? A. I did not go in to examine that part in 1508.

Q. No, but tell us what you saw in 1509? A. Well, I seen the wires which were laying along the floor attached to this listening device behind the radiator, and the other 200 end of the wire was pushed through this aperture in the baseboard of the wall.

Q. How many wires were there? A. There were two that I could see.

Q. Two? A. Twisted wire.

Q. Yes. What kind of twisted wire? A. Well, it looked like small telephone wire, or electric wire, like the wiring for a chandelier. That is what it looked like to me, small wire.

Q. You mean wire that would generally be used, let us say, for the telephone? A. Yes, similar to that.

Q. Or lighting purposes? A. Yes, sir. 201

Q. And how thick was that wire? A. Well, I can't judge that very well. It wasn't very heavy, not like electric wire.

Q. It was not like electric wire? A. No, sir.

Q. Would you say it was as thick as this pencil (indicating)? A. Not quite as thick; no, sir; as far as I could see.

Q. Tell me, what was its color? A. Well, it was dark in color, dark gray, something like that, grayish brown as near as I could see to it, what it was.

202 Q. That is, the color of the insulation? A. That was the wire.

Q. Oh, that was the wire. Wasn't the wire insulated? A. It looked that way to me.

Q. It looked insulated? A. I did not examine it thoroughly. I just seen what he had on his arm, the man that made the installation. He had a coil of it.

Q. Now tell us what you saw there on the floor. You say you saw what? A. That was the same wire.

Q. Well, now, how could you tell that it was the same wire? A. Well, I seen him pushing the wire through the wall. He used it from the same coil.

203 Q. Now you say you saw it connected to that listening device, did you not? A. Yes, sir.

Q. And did you follow that connection from the listening device to the aperture in the wall? A. That is right.

Q. That is right. Well, how did you follow it? A. Well, I just followed where it went through this aperture and that is as far as I looked.

Q. Did you take your hand and follow along? A. I did not examine it, I did not examine it.

Q. Then how did you know that these wires were connected? A. I didn't say they were connected.

Q. Oh, you didn't say that? A. Only on the end where
204 the listening device was attached, but I didn't see where it was connected on the other end because they led into the empty office, 1508.

Q. And you cannot describe the wire to us more particularly? A. Not accurately. There wasn't much time spent in the office during the installation because it didn't take very long to push it through that aperture.

Q. How far was it from the radiator to that aperture? A. Well, offhand I should judge about four or five feet, something like that. Offhand I don't know. I have no accurate measurements.

Q. And where did you say the listening device was attached to? A. It was laying on the carpet behind the radiator. 205

Q. Oh, it was just laying there? A. Yes, up against the baseboard. That is where I seen it.

Q. You are sure that the listening device was lying on the carpet there? A. That is where I seen it.

Q. Behind the radiator? A. Yes, sir, that is where I seen it.

Q. That is where you saw it? A. Yes, sir.

Q. Now will you tell us why you swore as recently as April 4th that it was attached to the radiator? A. I didn't make any statement that it was attached to the radiator. 206 It was lying behind the radiator on the floor.

Q. Will you read this here (indicating)? A. (Witness reads.)

Q. Yes. A. Well, that's the statement I made that this listening device was on the floor behind the radiator but I never saw anything else like dictaphones or anything else.

Q. Well, here it says "attached to the radiator." A. Not to the radiator. Underneath the radiator on the floor up against the baseboard.

Q. So this part of the affidavit where you say it was attached to the radiator— A. I never made that statement it was attached to the radiator. 207

Q. Isn't this your affidavit? A. I said it was lying underneath of the radiator.

Q. Tell me whether or not this is your affidavit. Is it your affidavit? A. Well, I made the statement that it was lying under the radiator on the floor.

Q. Will you answer my question, please? Is this your affidavit or is it not? A. I didn't say it was attached to the radiator.

Mr. Schachner: I did not hear that.

(Answer read.)

208 Mr. Corbin: May we have that paper marked? It isn't in evidence, or any identification of it here.

Mr. Schachner: It is part of the record since it was filed.

The Court: It is not necessary to have it marked. The rule is this: he made a statement different from what he is making now, on another occasion. Then that may be shown in contradiction of his present testimony, so he has laid the predicate now, I take it, in asking him if this is his affidavit, if he made it or signed that affidavit. If he admits it, that is the end of it. If he does not, then the Government will
209 be permitted to contradict it if it has witnesses by which it can contradict it.

Mr. Corbin: I do not take issue with any of that law, sir. My only point was that a paper is being shown to the witness which is not marked, which is not the original affidavit at all, and it would seem to me that it might be orderly to mark it so that we would know for the record.

The Court: You say that is not the original affidavit?

Mr. Corbin: That is what I understand. I make the point anyway, if your Honor feels that it is or if
210 the District Attorney will say that it is, I will take his statement for it. Is that the original affidavit?

Mr. Schachner: The original affidavit, sir, is in the possession of the court.

Mr. Corbin: Then your answer is no. I ask that the paper which the witness has been shown be marked for identification.

The Court: Very well, let it be marked for identification. However, gentlemen, the rule is this: if you want to impeach a witness, you can ask him whether he made a different statement on a former occasion.

Mr. Corbin: I never heard anybody question that in this room, Judge. 211

The Court: Then that ends it. If he denies it—

Mr. Corbin: There is no question about that at all, your Honor.

The Court: Very well. I will let the document about which he is questioned be identified.

(Marked Government's Exhibit B for identification.)

Q. Now I show you this Government's Exhibit B for identification, and I ask you whether this is or is not your affidavit? A. I made an affidavit that the device was placed under the radiator, not to the radiator. 212

Q. Is this the affidavit which you made, yes or no?

Mr. Corbin: Now if a point is going to be made of it, I object to it—

The Court: I sustain your objection. You can ask him whether he made any statement different from this, or if you produce the original affidavit to him you can present it to him and ask him if that is it, but to present a copy of anything and ask him if that is his affidavit, that is too broad. I will permit you to ask him whether or not he made a certain statement, anything you want to ask him about certain statements, but I will sustain an objection to the question propounded to him to answer yes or no, whether that is his affidavit, when, as a matter of fact, you say that that is only, at most, a copy, so I wouldn't require him to answer yes or not to that. 213

Q. Can you tell me whether the statement which you looked at right now appeared in the original affidavit which you made out? A. No, sir.

14 Q. It did not appear there; whatever appears here did not appear in the original affidavit? A. That is, the latter part of it.

Q. It did not? A. No, sir.

Mr. Walsh: If your Honor please, there is no question that this is the copy of the affidavit which was submitted to the court and given to the district attorney by Phillips, Mahoney & Fielding, and rather than waste time I will ask if this is an exact copy of the affidavit that was signed for the purposes of this motion?

15 Mr. Fielding: I just was going to inform your Honor that this is a copy of the original affidavit. There is no question about it.

The Court: Very well. Do you want the original?

Mr. Schachner: No.

Q. Now I want to ask you again whether this is a correct copy of the affidavit which you made out, or whether it is not? A. Well, the latter part of that don't appear correct. I do not recall making any such statement because I did not see anything like that take place.

Q. Indeed, according to your own opinion, this latter 16 part is definitely false, is it not? A. Yes, sir.

Mr. Fielding: Now—

Mr. Schachner: The witness has answered.

Mr. Corbin: Well, you cannot question that much, can you, Judge?

The Court: I will overrule the objection because as a matter of testimony it comes to the court. I will overrule the objection.

Mr. Corbin: Judge, I suppose if anything is false, it is false, whether it is definitely false or not definitely false. I do not understand that qualification.

and I do not think the witness should be interrogated 217
in that form in any event.

The Court: I will overrule the objection to that question.

Mr. Corbin: I except.

Mr. Schachner: Your witness.

Redirect examination by Mr. Fielding:

Q. Now I read from a copy of the same affidavit to which reference has been made by the assistant district attorney. In next to the last page of your affidavit, beginning at the bottom o fthe page previous, where you signed this affidavit— 218

Mr. Walsh: What page is it?

Mr. Fielding: It is the bottom of page 1 of his affidavit, verified the 4th of April.

Q. (Continuing) "These three men took up with them a dictaphone machine, its wiring equipment, and they started to install the machine and brought the necessary wires from room 1508 through a hole in the baseboard of the wall between that room and 1509, along the 1¼" steam pipe to the steam radiator in room 1509, to which was attached a device like one which is used to talk into, that device being behind the radiator in room 1509, and 219
the machine, a dictaphone, being on the floor of room 1508 with ear attachments."

Now generally, is that the correct statement of what you saw? A. Well, that is a statement, yes. I understood it was a dictaphone, although I did not go in to examine it in 1508.

Q. But that statement is true today as it was then, is that correct? A. Yes. I was told that there was to be a dictaphone installed and I labored under the impression that it was. I did not examine it.

220 Mr. Fielding: That is all.
Mr. Corbin: May I inquire briefly, Judge?
The Court: Yes.

By Mr. Corbin:

Q. This portion of the affidavit which was just read to you, reads in part as follows: " * * * that the wires were drawn from room 1508 through the hole in the baseboard of the wall between that and room 1509 along the 1¼" steam pipe to the steam radiator in room 1509 to which was attached a device, like one which is used to talk into, that device being behind the radiator in room 1509."

221 Now what is there about that that is false as you characterized it? A. Well, the statement that was made that it was attached to the radiator. It was not attached to the radiator. It was laying under the radiator on the floor. That is the statement I made.

Q. Behind the radiator? A. Yes, sir.

Q. That is, when you were asked if they attached it to the radiator itself, you did not recall that? A. I didn't.

Q. And did not recall that statement or anything that might be so interpreted, being included— A. No, sir.

Q. In your affidavit which you signed, is that right? A.

222 Yes, sir.

Q. Well, it seems here to be in this affidavit. It speaks about the steam radiator in room 1509; the words are added, "to which was attached a device like one which is used to talk into, that device being behind the radiator in room 1509."

Now when you signed this paper, Government's Exhibit B for identification, which appears to have been verified by you on April 4, 1940, did you notice that language, "to which was attached a device like one which is used to talk into"? A. Yes, sir, I did.

Q. Did you prepare this affidavit yourself? A. No, sir.

The questions was put to me and I answered them to the best of my knowledge and belief. 223

Q. Where were you when you signed it? A. In my own home, Congers, New York, Rockland County, and I went down to the Notary Public.

Q. Down town? A. The first one was Edgar H. Jolliffe, real estate man and notary public. That was the first affidavit.

Q. E. Hubbard Jolliffe? A. Right.

Q. He is a real estate man downtown? A. Real estate man.

Q. And who was it that came to your office or came to your home? A. To get this affidavit? 224

Q. Yes. A. Mr. Schulman.

Q. And did he have it written out in typewritten form when he got there? A. No, sir. He wrote it in pen and ink as I was talking.

Q. I see. A. He jotted it down on sheets of paper.

Q. And that is the form that we have it in? A. Exactly.

Q. That you signed? A. Yes, sir, written in pen and ink.

Q. I see. A. That is what was sworn to.

Q. And when you were telling him what you saw on the occasion that we have been talking about, he was writing down what you were saying, or the substance of what you were saying, at least you supposed so. Now after he had finished his job of writing out what you had said, did you take the paper and read it? A. I read it through thoroughly. 225

Q. You did? A. Yes.

Q. Well, today you say that the words, refefring to the radiator, "to which was attached a device" are inaccurate? they are wrong? A. Yes, sir.

Q. You say today that they don't state the fact? A. This outfit was laid on the floor. I didn't say "attached to the radiator".

Q. Just follow me. A. Yes, sir.

26 Q. You say today that these words "to which was attached"— A. This listening device.

Q. To the radiator, that they are wrong? A. Yes, sir.

Q. And when you read them in handwriting the day in April when you signed the original affidavit, why didn't you then say they were wrong and refuse to sign the paper? A. I didn't pay the same amount of attention to it, very likely, that I did the former statement.

Q. Well, did you go over that paper after it was written out in longhand very carefully? A. I just read it through.

Q. Each word? A. I read it through, yes, sir. I understood what it was.

27 Q. Did you then understand that you were saying or signing a paper saying that the device was "attached to the radiator"? A. No, sir.

Q. Did you intend, when you signed that paper, to sign something which was wrong or which contained any statement which was wrong in whole or in part? A. No, sir.

Q. Is it or is it not the fact that those four words "to which was attached" and which obviously referred to the steam radiator in room 1509—did you intend when you signed the paper containing those, to commit perjury? A. No, sir.

28 Q. Well, did you notice them as you read them? A. Well, I—

Q. Did you realize when you put your signature on that paper and swore to it, that it contained a statement which might be interpreted or reasonably should be interpreted, I will put it, as stating that the device was attached to the radiator? A. It was attached to the listening device. That is the way I saw it laid out on the floor. It was not attached to any radiator so I couldn't very well make a statement to that effect.

Q. Well, you did not intend to state that? A. No, sir.

Q. Did you? A. No, sir, absolutely not.

Q. So it is a fact, is it not, when you signed the paper, 229
you did not realize that anyone could interpret what you had signed as a statement that the device was attached to the radiator? A. That ain't the way I understood it.

Q. Did you tell Schulman at that time that the device was behind the radiator in room 1509? A. I did, yes, sir.

Q. And is that statement which I quote, and which is contained in the same sentence, namely, "that device being behind the radiator in room 1509," true? A. Yes, sir.

Q. And the next words "and the machine or dictaphone being on the floor of room 1508 with ear attachments." A. I didn't see no ear attachments, only the boxes and the wires. The equipment was brought in and I never saw any 230
ear phones. I did not enter that office.

Q. No, but you were there when the door was opened? A. And they brought it in and placed it on the floor.

Q. Put it on the floor? A. And I went and opened up the other door.

Q. So that those things were on the floor of room 1508? A. Yes, but I don't know what the contents of the boxes were.

Q. Of course not. Well, Mr. Schachner asked you here a few moments ago whether this affidavit was definitely false, and you said yes. Did you intend at any time that 231
it would be a false statement to any extent whatever? A. No, sir.

Q. And as soon as that was shown to you by him you said that that was not right? A. The latter part of that statement, the latter part.

Q. That is, you took issue with it the moment he read it to you here today? A. Yes, sir, because I did not make that statement that it was attached to any radiator; that it was under.

Q. Yes. So that if that statement appears there, as it does appear there, it was in the handwriting of Mr. Schul-

232 man and escaped your attention when you signed it? A. Well, possibly.

Mr. Corbin: That is all.

Recross examination by Mr. Schachner:

Q. Before you were asked about the thickness of the wire. If I show you this pencil can you tell us now whether the wire was as thick as this pencil (indicating)? A. No, it was not quite as thick as that. Offhand I do not know. I did not examine it.

Q. Was it as thick as the wire in this paper clip (indi-
233 cating)? A. No, it was thicker than that.

Q. Much thicker than that? A. Yes.

Q. In between the pencil and the paper clip (indicating)? A. Well, about an eighth of an inch or so, like a small sized telephone wire, small equipment. That is as near as I could judge.

Q. Now in that statement which Mr. Corbin asked you about, you talk about the device, the thing that is behind the radiator or attached to the radiator, as the case may be. You talk about a device "like one which is used to talk into"? A. Well, it is to pick up a conversation. That is what it is intended for.

234 Q. Now just a minute. Did you say "a device like one which is used to talk into"? A. Well, it wouldn't be that.

Q. No? A. No, sir.

Q. It was not a device like one which is used to talk into? A. No, sir.

Q. And when that appears in the affidavit, that isn't true either? A. Well, it is just for the pickup of a conversation.

Q. Is it a device like one which is used to talk into? A. Well, I have never talked into one so I don't know.

Q. But you say here, "a device like one which is used

to talk into," is that true? A. Well, something like a 235
telephone—a telephone.

Q. No. Is it a device "like one which is used to talk into"? Will you answer that yes or no. A. Well, that is what it appeared to me like.

Q. Like a device used to talk into, is that right? A. Like listen to, to pick up anything that is said. That is all I know what it is about.

Q. Now listen. You say here it was something used to talk into, is that right? A. Well, that is what I surmised it was offhand.

Q. Offhand. Now that is reasonable enough, but today when you testify you say it was like an ear piece. How 236
do you explain that sometimes you seem to think it was something to talk into and sometimes it is something to listen with? A. My contention is that it was a listening device. That is what I called it.

Q. I am not asking you what it was but just to give us a description of what it looked like. Now did it look like something to talk into or did it look like something to listen to? A. Well, it was something like the size of the old listening device from a telephone you put to the ear.

Q. Ah, in other words it was not like something to talk into? A. Well, that's the way you put it.

Q. No. Which way would you put it, Mr. Frost? A. 237
Well, it was like part of the telephone that you listen into.

Mr. Schachner: Thank you.

By Mr. Corbin:

Q. Do you have any interest one way or the other in this case? A. Absolutely not.

Mr. Corbin: That is all.

Mr. Fielding: I have no further questions.

The Court: Anything further?

Mr. Schachner: No.

238 Mr. Fielding: That is the defendant Schulman's offer of proof of illegal entry into his office and the installation of apparatus by the Government authorities. I do not know whether Government intends to dispute it or not.

The Court: Does the Government desire to offer any evidence at this time?

Mr. Schachner: Yes, your Honor, but prior to offer any evidence, I would like to be heard, if I may.

The Court: Very well, I will hear you.

239 Mr. Schachner: The Government's contention is three-fold. First, the Government will introduce evidence to the effect that no microphone was ever placed into the office of the defendant Schulman. Further, the Government will concede or claim that on that night a microphone was actually installed. However, it is the contention of the Government that that microphone was situated in an aperture located in a wall separating the two offices from each other. In that wall there was a microphone. Further, it is the Government's contention by the evidence so far offered on behalf of the defendant Schulman, that the defendant Schulman has failed to carry the burden
240 of proof that any evidence was obtained over this microphone that was in the hole, according to the contention of the Government. However, should your Honor feel that the defendant has indeed made out a prima facie case, that evidence was obtained on some microphone situated there, the Government is prepared to go on and prove that through some mishap or other it was impossible to obtain any evidence over that particular microphone. However, the Government concedes that the listening device was used in connection with obtaining proof of these

things, and indeed the Government does intend to 241
offer evidence obtained by a listening device in the course of the trial of this case. However, the listening device that actually proved productive of evidence was an entirely different one. It is a device which is placed on the wall separating room 1509, which is the defendant's office, from room 1508, which is the empty office, which the Government had obtained permission to use. Now if I may just for a moment distinguish the two devices: the Government contends wherever there was one that was in the hole of the wall, which the Government believes the defendant's witnesses seemed to assume was in Shulman's office, that listening device did not prove 242
productive of any evidence. There was a second listening device that was merely placed against the wall. It was an apparatus that makes it possible by placing it on one side of the wall to listen to conversations taking place in the next room. The Government is prepared to go and offer proof of those contentions.

The Court: Here is my conception of the law at this time, gentlemen, that if any evidence was offered that was obtained by virtue of the conversation or conversations overheard over this listening 243
device, or detectaphone—I have heard it called that; I do not know what the technical name is; I did not understand them as dictaphones, but anyway, the instrument that has been described by the witnesses for the defendants.

It is my conception of the law that if the Government agents went there and obtained permission through the employes of the office building, without the consent of the defendant, and installed this listening device in his office, in the office of the defendant, and carried the wires through to another office and

244 there obtained competent evidence or material evidence against the defendants, that that would be an invasion of the defendant's rights, and if such evidence were offered, if such evidence be offered, would be objectionable.

On the other hand, if the evidence offered by the Government should be, as stated by the district attorney, obtained by the officers of the Government, who obtained permission to go into room 1508 and install the device on the walls of 1508, on the inside of 1508, so that they could hear what was going on in the other office, that that would not be an invasion
245 of the constitutional rights.

Now I never had this question presented to me before, but from my general knowledge of the violation of the search and seizure, of the rights of a man, I think that here a trespass would be committed if they fraudulently gained admittance or if they gained admittance to a man's private office without his consent and obtained evidence against him. Then I think the trespass is committed when they enter that office without his consent, or in effect fraudulently get into the office. For instance, the courts have held that while ordinarily the testimony of State
246 officers is admissible, the constitutional provision does not apply to them, but if the Government officers procured the aid of the State officers in making an unlawful search, then the testimony of the State officers is objectionable. So that if the Government agents here obtained the permission and co-operation of the engineer and the superintendent of that building and gained admittance to that office and there installed the device, then they committed a trespass, and the evidence would not be admissible. If I am wrong on that, if you want to be heard on that, I

will hear you. But on the other proposition, if the 247
evidence was obtained by installing the device against the wall in room 1508, it would be admissible. Of course there is no testimony upon this, or whether the Government intends to offer evidence that it was unlawfully obtained or not. So as it now stands, I do not see any ruling for the Court to make other than that the Court would announce at this time, in the absence of further argument and convincing authorities, that if evidence was obtained in the manner shown by the defendant, claimed by the defendant here, that that evidence would be objectionable. That is all that I see before the Court now. 248
Of course I will permit, if the Government wants to put its testimony on now, to show what it proposes to show, and I will permit you to do that. On the other hand, I think the Government has another course open to it. You can offer any evidence upon the trial of the case, but I will say now, unless you desire to be heard upon it, that if any evidence comes out or is sought to be brought out that was obtained through the device shown by the defendants to have been installed there, then that testimony I think would be objectionable.

Mr. Schachner: Your Honor, the Government feels 249
that the law as expounded by your Honor is quite adequate to sustain the point of the case of the Government. However, I think it would be advantageous if the Government could at this time affirmatively establish that no evidence was obtained over that microphone irrespective of where it was placed. It is the contention of the Government that there was no microphone in the defendant Schulman's office. However, wherever that microphone was, no evidence was obtained over it, and if your Honor feels that

this is proper procedure, I would respectfully suggest that for appeal purposes at this point, after the Government has offered evidence to that effect, an affirmative finding of fact be made so that the record be perfectly clear at this time as to the type of evidence the Government intends to offer in this case, and I think it can be done more conveniently at this time than have the trial interrupt it.

The Court: Well, I think so myself. I just did not want to be suggesting how the case ought to be conducted. Of course the question whether or not any evidence was unlawfully received or obtained is a question of law for the Court to decide, and if there is a dispute about it, then it is a matter that ought to be made before the jury is chosen, or at least out of the hearing of the jury. So I will permit you to proceed as you wish.

Mr. Fielding: If your Honor please, for the record I would like to say that I will reserve my rights at any time during the course of the trial to raise the same question.

The Court: Yes, you may do that. I think that is necessary. I think this is just like any other question of an alleged unlawful search and seizure. The procedure is first a motion to suppress the evidence, and then if it should be overruled, why then an objection be made as and when the testimony is offered before the jury. Very well.

Mr. Corbin: And may that ruling apply to the other defendants also?

The Court: Yes, that may apply to all the defendants.

JAMES W. RANSOM, called and sworn as a witness for the 253
Government, testified as follows:

Direct examination by Mr. Schachner:

The Court: Mr. District Attorney, do you controvert the question of the announcement of law? I do not mean for an admission, but I mean your judgment of it, which I announced, that if it were assumed that this testimony was received over a device installed, as testified by the witnesses for the defendant, is it your judgment that that testimony would still be admissible or not?

Mr. Schachner: Your Honor, if that question were 254
raised now,—I realize I am now speaking without any binding effect—.

The Court: Yes, without any binding effect or concession or anything. I am not asking for that.

Mr. Schachner: I have been unable to find any authority conclusive one way or another. I think it is possible for the Government vigorously to contend that hitherto anything obtained in violation of the search and seizure provision of the Fourth Amendment to the Constitution had to be something substantial, something concrete, something that can be searched for and something that can be seized, and 255
that the law and the procedure that grew up in connection with that whole field of law is reasonable in terms of concrete things, but when we get to questions of listening to a conversation, that is a wholly novel question of law, and the Government would then contend that that wholly novel question of law should be resolved in its favor. However, it so happens, as in this case the Government is quite willing to concede that it is probably academic, in view of the fact that no evidence was obtained.

The Court: Very well, you may proceed.

256 By Mr. Schachner:

Q. Mr. Ransom, you are a special agent employed by the Federal Bureau of Investigation, are you not? A. That is right.

Q. Now do you remember installing a listening device in Room 1508 in the building at 277 Broadway in the City of New York? A. I do.

Q. And that was on or about April 7, 1937? A. Yes.

Q. Did you—

Mr. Corbin: On or about. May we have the date, if he knows.

257

Q. Do you know the exact date? A. Yes, it was April 6, 1937.

Q. Was it late at night, April 6th? A. It was about ten-thirty p. m.

Q. Were you alone there? A. No, I was not.

Q. Who accompanied you? A. Mr. Turner.

Q. You and agent Turner went there? A. That is correct; yes, sir.

Q. Now, what did you do there? A. Well, after arriving at the building we installed a microphone in an aperture in the wall between 1509 and 1508.

258 Q. Did you connect that microphone by wire with a listening device or amplifier? A. The microphone was connected by wire to an amplifier also located in room 1508.

Q. Was that microphone situated in room 1509? A. It was not.

Q. Well, after you installed it, what did you do? A. We tested it to see whether it was functioning properly.

Q. And after you had tested it, what did you do? A. We then disconnected the amplifier and returned with it to the office.

Q. What did you leave in room 1508? A. In 1508 there

was only a small piece of wire leading from the microphone 259
into the room.

Q. And the microphone was left in that hole in that wall? A. It was left in the hole in the wall, yes.

Q. Was that all that you left there? A. That is correct.

Q. Did you leave any box or anything there? A. No, sir.

Q. About what time did you leave that place? A. Oh, I would say shortly after eleven.

Q. Did you ever go back there? A. No, sir.

Q. You did not listen to any conversations of the defendant Schulman there? A. No, sir.

Mr. Schachner: Thank you. 260

Cross examination by Mr. Fielding:

Q. How large was this microphone that you used? A. This particular microphone is approximately an inch and a quarter in diameter. It is circular, an inch and a quarter in diameter, and possibly an eighth of an inch in thickness.

Q. Do you claim there was an open hole between room 1508 and 1509? A. Yes, there was a hole.

Q. Weren't the steam pipes running through that aperture? A. To the best of my recollection there was a pipe in there—yes. I don't know whether it was running through or in along the wall, but there was a pipe of some sort 261
in there, I know.

Q. Well, how could you put an instrument, having the dimensions you stated the dimensions to be, inserted in that hole where this pipe was running through? A. There was sufficient space there between the pipe and the outer circle of the hole.

Q. How did you get into room 1508? A. I went in with Mr. Turner and a third party. I beg your pardon, into what room?

Q. 1508. A. I went into 1508 with Mr. Turner.

262 Q. Was any officer of the building with you? A. To the best of my recollection, no.

Q. How did you get in? A. He opened the door and we walked in.

Q. Who opened the door? A. This building representative.

Q. But I say, there was a member of the building with you? A. You said in the room. I said not in the room.

Q. He did not go in the room? A. No, he did not.

Q. Would you recognize him if you saw him? A. No, I don't believe I would.

Q. Were you one of the gentlemen who went over to
263 Brooklyn to see the superintendent, Mr. Raynor? A. No, sir.

Q. And your first knowledge in connection with the matter was to go into room 1508, being let in there by a representative of the building, and installing what you just testified to? A. Yes, sir.

Q. You never went into Room 1509? A. Yes, I went into Room 1509.

Q. And 1508? A. That is right.

Q. And 1510? A. No, I did not go into room 1510.

Q. Well, 1509 is Mr. Schulman's office, isn't it? A. Well, I assume that it is. That is the room I was in.

Q. You were in that room? A. That is right.

264 Q. Why did you go in there? A. I went in there to see where the most logical place would be to place the microphone.

Q. And you selected this hole in the wall as the proper place? A. That is right.

Q. You say the microphone did not physically appear in any part of Shulman's office? A. That is correct, yes.

Q. Did you pull any wires through from 1508? A. Yes.

Q. Pulled them through that hole in the wall? A. No, just to the wall.

Q. To the wall? A. That is right.

Q. Where did you start, in room 1509 or 1508? A. I think we started in room 1509. 265

Q. You had a wire in there first? A. No, the wire was pushed in from room 1508.

Q. Oh, by one of your party? A. Yes.

Q. And then did you physically help to pull it through? A. Yes.

Q. How far did you pull it through? A. You mean past the wall?

Q. Yes, into room 1509. A. Just a sufficient distance to make the connection to the microphone, and then it was pushed back in.

Q. So at one time it was in room 1509? A. Yes. 266

Q. And you were led into that room by a representative of the building, knowing it was the room of this defendant, the office of this defendant Schulman? A. I don't whether at that time I even knew the gentleman's name who occupied the room.

Q. Didn't you see any name on the door? A. I don't recall.

Q. It had a door, is that right? A. That is right.

Q. Now did any one of the representatives of the building go into room 1509 with you and the other gentleman? A. To my recollection, no. They may have gone in there just momentarily and then left. They weren't in there for a length of time. 267

Q. But you wouldn't say they weren't in it? A. No, I would not.

Q. Did you go back into room 1508 after being in room 1509? A. Yes.

Q. Did you have anything to do with hooking up the apparatus? A. To which apparatus do you refer?

Q. The one that you are referring to, to the microphone and the wire in the wall? A. I hooked up the microphone with the wire, yes.

268 Q. And did you also hook it up for the dry cells or whatever power you used? A. To the amplifier in room 1508.

Q. You hooked that up? A. Yes, sir.

Q. So when you left that it was a working unit, so far as you know? A. It was a working unit. Before we left we dismantled it, before we left.

Q. But it was working some time before you left? A. That is right.

Q. The operation being installed by you? A. That is right.

269 Q. How long were you there on that occasion? A. I beg your pardon?

Q. How long were you in the building on that occasion? A. Well, I imagine about a half hour, possibly 35 minutes.

Q. You went there about what time? A. I believe about ten-thirty.

Q. At night? A. Yes, sir.

Q. And you were all through by eleven? A. To the best of my recollection, I would say eleven, or five minutes after.

Q. And did you dismantle the apparatus before you left? A. Yes, sir.

270 Q. What did that consist of? A. Simply disconnecting two wires from the amplifier.

Q. They could be hooked up again without any trouble? A. Yes.

Q. So that it would be available, the apparatus would have been available the next day, to hear a conversation in 1509, so far as you were able to fix it up? A. Yes.

Q. And all that it needed was somebody to walk in there and adjust the two wires to the source of power and it became, with the amplifier, a working machine? A. Yes, that is right.

Mr. Felding: That is all.

Cross examination by Mr. Corbin: 271

Q. Mr. Ransom, when you went into 1508 the first time that night it was around ten-thirty? A. That is the best of my recollection; yes, sir.

Q. Because 1508 that was the first room you went in? A. I believe so.

Q. What did you take into that room when you went in the first time? A. A small amplifying case.

Q. For the microphone? A. Yes.

Q. No other sort of apparatus of any kind? A. No, sir.

Q. So that it was your thought to install the microphone and that only on that occasion? A. That is right, yes. 272

Q. And that is all that you did install on that occasion, is that right? A. That is right.

Q. Now you had never been into 1509 before, had you? A. No, I had not, sir.

Q. Or 1508 or 1510? A That is correct.

Q. Did you have any plan or layout of the office furniture in 1509? A. No. I don't believe so.

Q. So that when you went from 1508 around into 1509 one purpose was to see where the desk was and where the chairs were and where the instrument could be most advantageously located? A. Well, I think it had been described to me as to what was there. 273

Q. I see, that was your purpose? A. That was one purpose, yes. That is right.

Q. That was one purpose, that is what I mean. It was a necessary purpose, wasn't it? A. Yes.

Q. When you were in 1508, before you went into 1509, did you have a light on in 1508? A. In the room in which we were?

Q. Yes. A. Oh, yes.

Q. Did you have a flashlight with you? A. I don't recall.

274 Q. You won't say you did have? A. I won't say I did and I won't say I didn't.

Q. You don't know one way or the other? A. I don't recall.

Q. Did your partner have one? A. That I don't know.

Q. Did you use any? A. I don't know whether I did or not. I couldn't recall.

Q. Did he use any, so far as you know? A. I don't recall whether he did or not.

Q. When you were in 1508 before you went in 1509, there was no light in 1509, was there? A. That I don't know.

275 Q. You couldn't tell from 1508 whether or not there was a light in 1509, could you? A. I don't recall whether I made any effort to tell or not.

Q. Will you search your memory on that? A. Well, I don't know. There may have been and there may not have been.

Q. Did you have your head down to the baseboard located under the hole along the inch and a quarter iron pipe in 1508 before you went into 1509? A. I didn't have my head down to it, no. I noticed it there.

Q. You saw a hole? A. Yes.

Q. And you saw that the pipe did not fit accurately
276 in the hole, is that it? A. Yes, that is right.

Q. So you did not look down and your partner did not look down to see what the condition of that hole was? A. No, I didn't. I didn't look down. I said I noticed the hole. I didn't put my head down to look through it.

Q. Then you couldn't see and did not see what the size of the hole was on the other side of the partition did you? A. That is right.

Q. So you had to go into 1509 to find that out, didn't you? A. Yes.

Q. And you went into 1509 for that second and necessary purpose? A. Yes.

Q. Right? A. Yes. 277

Q. Did you have anything to do with using any other instrument on the wall or otherwise in that 1508 or 1509? A. No.

Q. You have been here for the last half hour and have heard a discussion, haven't you? A. Yes, sir.

Q. So far as any incident of the installation of some apparatus, that is, against the wall, that you can hear through or that draws the sound through the walls, you don't know anything about that? A. Not in this particular case, no.

Q. You know what those instruments are? A. Yes, sir.

Q. You operate them? A. I have installed it. 278

Q. And operated it; to test it, at least? A. Yes.

Q. You have heard all the facts and results? A. Yes, sir.

Q. You have seen it in operation, in other words? A. Yes.

Q. Know the instrument well, do you? A. Yes, sir.

Q. Which the Government uses, is that right? A. That is right.

Q. And which they did use in April of 1937, is that right?

Mr. Schachner: Judge, he testified he wasn't there. He does not know what was used. 279

Q. I say, you know what instruments of that general character were in use in 1937, do you not? A. I know what instruments are available, yes, for that type of work.

Q. And were those? A. Yes.

Q. All right. What do they call it? A. Well, the name that I have for them is detectophone.

Q. Detectophone? A. That is right.

Q. And they operate by electric power? A. Well, now—

Q. What is the motive power, the operating power? A.

280 It is used with a crystal microphone connected to an amplifier similar to a radio.

Q. It is electricity? A. Yes.

Q. And it is the power of electricity upon the air, or technically its contact with the electricity in the air, is it not, that permits those machines to draw the sounds through rather solid substances? A. No, sir.

Q. Or materials? A. No, sir.

Q. What is it that draw the sound through so that you can amplify it on the other side? A. It is a sensitive needle working against the wall which picks up the vibrations, sound vibrations.

281 Q. Well, picks them up by way of electric power? A. Not to pick up, no. The electric power is simply an amplification. The sounds are picked up by a delicate needle which is placed against the wall and which in turn operates against a crystal.

Q. So that a conversation in this room may be picked up in the next purely by virtue of the vibration which the conversation itself causes? A. That is right, yes, sir.

Q. In the wall between the two rooms, is that right? A. That is right.

Q. And that detectophone or dictograph, is it? A. Detectophone.

282 Q. That operated by picking up the vibrations caused by the conversation in the wall, is that it? A. That is correct.

Q. And without any wire or opening or any other assistance leading into the room in which the conversation occurred? A. No, there is a wire leading from the microphone to the amplifier, but there is no wire leading into the room; that is correct.

Q. And that wire from the microphone to the amplifier is only for the purpose of amplifying the sound? A. That is right, yes.

Q. The vibrations that the microphone records, isn't that so? A. That is right. 283

Q. Now those were in use in 1937 in April? A. Yes.

Q. By the Government in this district here in New York? A. Well, whether they were in use or not, I don't know. They were available for use.

Q. In the operation of those detectophones, does it matter at all where they are placed? A. You are referring now to the one placed against the wall, sir?

Q. Yes, that is what I mean. A. It depends a great deal upon the structure of the building, whether they operate satsifactorily or less satsifactorily.

Q. Do you have to test those before you use them on an ordinary office building wall? A. Well, it could be done. It could be tested. 284

Q. That is your ordinary practice? A. Yes, if the opportunity affords.

Q. That is, to go in the other room and have a conversation and then see where on the wall of the room in which the machine is installed it picks up the conversation to the best advantage? A. If the opportunity presents itself, yes.

Q. Is there some other way of installing them except against the wall? I suppose on the floor or ceiling they operate equally well, do they? A. Well, that depends on the type of material; not necessarily. A wall might be thicker than a floor and vice versa. 285

Q. Yes. It might be a stone wall. Can you take that through a stone wall? A. It is possible, yes.

Q. What about this wall, having in mind the wall between 1508 and 1509? Could one of those things be put on the wall of 1508 anywhere—top or bottom, or one end of the wall or the other end of the wall, to the same advantage so far as hearing a conversation in 1509 is concerned? A. I don't know. I didn't try it, sir.

Q. Well, you saw that while there. You know the gen-

286 eral character of it, don't you? A. I couldn't tell you now where it was placed or what it was.

Q. So that you couldn't tell without further examination and some testing, whether that instrument could be placed or it could be operated successfully on any part of the wall of 1508? A. It might be; it might not. I couldn't say.

Q. Thank you. Now, so far as the microphone is concerned that you installed that night, that was physically installed while you were—you yourself were physically in 1509? A. That is right.

Q. Doing the work? A. Yes, sir.

Q. And how thick did you find that wall to be along
287 the pipe? A. I couldn't answer that. It may have been six or eight inches. It may have been three or four inches.

Q. Well, do you know how far back in the hole you placed that microphone? A. Oh, I at least placed it—oh, I would say maybe an inch. That is, the edge towards the room 1509 was placed, I would say, an inch.

Q. An inch inside the line of the wall paper? A. Yes.

Q. The wall surface of 1509. Is that your best judgment? A. That is the best of my recollection.

Mr. Corbin: That is all.

288 Cross examination by Mr. Mintzer:

Q. Just one or two questions: After you installed this detectophone and microphone, did you go into Mr. Schulman's office to make some tests as to whether it worked or not? A. Are you referring to the microphone in the hole, sir?

Q. Yes. A. Yes.

Q. You went into Mr. Schulman's office and talked to see whether your partner could pick up a conversation? A. Yes.

Q. Is that right? A. Yes.

Q. And did it work? A. I believe it did. He told me 289
that it did.

Q. And then I believe you said that after you tested it you dismantled it, is that correct? A. I removed the wire—disconnected the wire from the amplifier.

Q. Why did you do that? A. Because it isn't the practice to leave equipment of that type any place other than our own office with no one to take care of it.

Mr. Mintzer: That is all.

By Mr. Fielding:

Q. Did you dismantle it at any time? By dismantling, 290
I mean take the microphone out that you left in the hole that night, at any later time? A. No, sir.

Q. So the last you had to do with the matter, so far as those rooms were concerned, was what you told us you did on that night? A. That is right; yes, sir.

Q. When you left it, it was working O. K.? A. No, it wasn't working O. K. when I left. Technically it had been working but I disconnected it when I left. It was working before I left, yes.

Q. That is, like hanging up a receiver? A. That is right.

Q. All you have to do is take the receiver off? A. Yes, 291
sir.

The Court: You disconnected it and left it there?

The Witness: We left the microphone there but didn't leave the amplifier there.

By Mr. Mintzer:

Q. The face of the microphone faced Schulman's room, did it not? A. Yes.

Q. Which way did it face? A. Well, sort of alongside the pipe, between the pipe and the wall.

Q. On a slant? A. That would be more like it, yes.

292 Redirect examination by Mr. Schachner:

Q. Mr. Ransom, did you leave any wire in Mr. Schulman's office, that is, room 1509? A. None whatsoever.

Q. What type of wire do you use for such purposes, can you tell me? A. Yes. It is a very fine black enameled wire, approximately a 64th of an inch, in diameter, at the outside.

Q. Would it be easily visible? A. No, it is practically invisible.

Q. Tell me, you have various types of microphones, do you not? A. Yes, sir.

293 Q. And can you tell me what type the microphone was that you left in the wall between 1508 and 1509? A. Yes. It is what is known as a carbon microphone.

Q. Do you know whether the detectophones—the things that you put up against the wall to listen to—what happens on the other side of the wall? Do you know whether they work with carbon microphones? A. No, that is a crystal microphone.

Q. Can you tell us which one is the more sensitive instrument, the carbon microphone or the crystal microphone? A. The crystal microphone.

294 Q. Can you tell us from your knowledge of that type of listening equipment whether a microphone put alongside of steampipes isn't very likely to pick up a great deal of noise from the steampipes and thereby make it impossible to listen to the conversation taking place? A. Yes, particularly with a carbon microphone because the granules become disturbed and create a hissing sound.

Q. And late at night, when you were listening there and testing that microphone, there was of course little noise in the steam pipes? A. That is right.

Q. Will you tell us whether the wire is as thick as the wire of this paper clip (indicating)? A. Much thinner.

295

Q. Very much thinner? A. Well, not more than half that diameter at the most.

Q. From your knowledge of listening devices that can be placed against the wall in order to find out whether a conversation taking place in the next room can be satisfactorily picked up by the listening device, is it necessary to do more than to take that listening device, place it against the wall and move it around along the wall until a spot is found which is most advantageous for the reception? A. That would be the usual way of doing it, yes.

296

Mr. Schachner: Thank you.

Recross examination by Mr. Fielding:

Q. Was any member of your party identified with fixing the crystal type of microphone in the other room, to your knowledge? A. I wasn't there when that was fixed.

Q. But you do not know whether the gentlemen who accompanied you installed this other microphone? A. I do not know.

Mr. Fielding: That is all.

297

HAROLD O. SCHROEDER, called and sworn as a witness for the Government, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Schroeder, you are an accountant employed by the Securities and Exchange Commission, are you not? A. Yes, sir.

Q. And during 1937 you were a special agent employed by the Federal Bureau of Investigation, were you not? A. Yes, sir.

Q. And do you remember whether or not you installed

298 a listening device, or listening devices, at 277 Broadway, in the City of New York? A. I did.

Q. Now when did you go to 277 Broadway? A. On April 7, 1937.

Q. And at what time of the day, do you remember that? A. At about 2.30.

Q. At about 2.30 in the afternoon? A. That is right.

Q. When you arrived there, to which office did you go? A. To room 1508.

Q. How did you get in, do you remember that? A. I went with two other individuals, one of whom had a key.

Q. Do you remember the names of the individuals? A.
299 Mr. Tufrner and Mr. Rubenstein.

Q. I take it one of these individuals used the key to open the dor and you walked in, is that right? A. Yes, sir.

Q. Now what did you find in the room when you came in? A. The room was vacant. There was a piece of wire coiled up and laying on the floor.

Q. And was there a microphone there? A. Not visible.

Q. But did you find one there? A. Yes. There was one attached to the wire and concealed in the wall.

Q. Do you know where it was? A. Yes, it was in a
300 hole in the wall near the baseboard in the wall between roms 1508 and 1509.

Q. Did you connect anything to that wire that was coiled on the floor? A. Yes. I had brought a small amplifier with me which I connected to the wires that were connected to this microphone.

Q. And did you connect anything to the amplifier? A. Yes, a pair of head sets.

Q. And that installation would ordinarily make it possible to listen to whatever sound waves struck the microphone, would it not? A. Yes, sir.

Q. Now on that particular occasion do you remember

whether or not it was possible to listen over that installation to conversations taking place near that hole? A. On that particular occasion the microphone noises were so loud in the earphones that the conversation and other things that were intended to be picked up couldn't be distinguished. 301

Q. Did you also install another listening device that would mak it possible to pick up a conversation in the adjoining room? A. I did.

Q. How did you install that? A. That was what was known as a contact microphone, and it was installed merely by placing it against the wall between 1508 and 1509, and then affixing it to the wall with adhesive tape so that I wouldn't have to hold it. 302

Q. How did you find out which spot you ought to place it against on the wall? A. I kept moving it around the wall until I found a spot where the sounds then going on in the adjoining room would be most advantageously heard.

Mr. Mintzer: May we have the date of that, Mr. Schachner?

Mr. Schachner: The witness testified April 7th.

Q. And on that day you moved this around until you found some spot and then you used adhesive tape, did you not? A. Yes, sir. 303

Q. To hold it against the wall? A. Yes.

Q. And did you connect an amplifier with that microphone? A. Yes, sir; the amplifier and two head sets.

Q. And two head sets. Did you test that installation? A. I did.

Q. Did you find it to work more satisfactorily than the other? A. Considerably so.

Q. Now what did you do with the other installation after you had completed this one? A. Well, after I had completed this one it was left there for a short time until

304 about five o'clock, when I dismantled the first one, took the amplifier and disconnected it from the wire, and drew the microphone back in through the hole, into 1508, and tacked it up.

Q. I take it that you had tested it for some time? A. Yes.

Q. Before you decided on this? A. Yes. We had been testing it for about an hour or so before we decided on one as against the other.

Q. And did you decide definitely that one would be useless? A. That is right.

Q. And that is the one which you dismantled again?
305 A. That is right.

Q. Did you listen to any conversation over that second installation, the one against the wall? A. Only during the period while they were testing it.

Q. Do you mind repeating it? A. I say only during the time while they were testing it.

Q. Did anybody take notes of that test, or did you make notes as to what you heard? A. Well, Mr. Bodinger, the stenographer, used one head set, and the other head set was taken apart, and one ear phone was used by Mr. Turner.—

Q. I am sorry to interrupt you, but I just want to fix
306 it. Which installation are you talking about now, the one that was placed against the wall or the one in the hole? A. The one that was placed against the wall.

Q. Oh; I want to know whether you took any notes of a conversation or whether the conversations were intelligible enough for you to take notes with that device that was in the hole? A. Oh, no, none at all.

Q. Did anybody else take notes or listen to it? A. No.

Q. Now will you describe in some detail the type of noise that you heard and why you couldn't listen to any conversation with the microphone in the hole? A. It is

a characteristic crackling and hissing sound that comes 307
from carbon microphones when they are placed in position where they are subject to outside interference.

Mr. Schachner: That is all.

Cross examination by Mr. Fielding:

Q. You say Mr. Turner was one of that group? A. Yes, sir.

Q. You said that Mr. Turner was one of the group? A. Yes, sir.

Q. And is that the same Mr. Turner that was with Mr. Ransom? A. Yes, sir. 308

Q. When they went into room 1509, Mr. Schulman's room? A. Yes, sir.

Q. Mr. Turner had a pretty good layout in his mind's eye on the Schulman's office layout, didn't he? A. Yes, sir.

Q. Didn't that help you somewhat in picking out a good spot to listen to the conversation? A. It did.

Q. You say you got up there at half past two? A. Approximately that.

Q. And you stayed there until when? A. Well, I would say I stayed there till about six or six-thirty.

Q. Who had the key to get in that room? A. Either Mr. 309
Turner or Mr. Rubenstein; I don't remember which.

Q. Well, did you know where either one of these gentlemen got the key? A. No, I don't.

Q. They had previously been the gentlemen who asked the superintendent's permission to open up those two rooms, is that correct? A. So far as I know, yes.

Q. So that for all you know, the key to 1508 might have been left with Mr. Turner all during the time that he was engaged in this work? A. Yes, it may have been.

Q. What time did you say the stenographer got there? A. Oh, about 3.45 or 4 o'clock.

310 Q. Well, who told him to come there? Who told the stenographer to come there? A. I don't know.

Q. Was it by prearrangement? A. I understood that one was coming.

Q. Well, who gave those instructions? Mr. Turner, to your knowledge? A. I don't know.

Q. Do you know who did? A. No, I don't.

Q. Now you said that the stenographer had on one set of earphones where there were two ear pieces? A. That is right.

Q. And that Mr. Turner had one on and— A. That is right.

311 Q. And the other gentleman—I did not get his name? A. Mr. Rubenstein.

Q. (Continuing) Mr. Rubenstein, he had the other earphone? A. That is right.

Q. And did you hear any yourself? A. When I first made the installation I listened to the sounds coming from the other office until I was satisfied that it was working properly.

Q. Was any part of that apparatus tied up with the amplifier that had been brought there before? A. None at all.

Q. In connection with the carbon microphone set? A

312 No. There were two distinct installations.

Q. What was the source of the motive power of this second described microphone? A. Well, the wall, the contact microphone?

Q. Well, that is the agitation puts the sound waves into the contact? A. That is right.

Q. And then they run along the wire? A. That is right.

Q. And where does that wire terminate? A. In the amplifier.

Q. In the amplifier. Well, did you bring another amplifier that day? A. Yes. I had two amplifiers that day.

Q. Two? A. Yes. 313

Q. Who were in the room at the same time? A. That is right.

Q. One attached to the carbon microphone set and the other to the crystal microphone set? A. That is right.

Q. Did you hear any conversations over the "mike" that was installed in the wall? A. We could tell roughly that somebody might be saying something but you couldn't distinguish what was being said.

Q. And acting on that information you then went to the good set? A. Yes, sir.

Q. But for leads you depended on the microphone set, the carbon? 314

Mr. Walsh: I object to the form of that question. It calls for a conclusion. "The leads." There has been no "leads" testified to yet.

The Court: I will overrule the objection. This is cross examination.

A. I don't understand what you mean by "leads".

Q. Well, you first hear some agitated condition over this carbon microphone and then you make sure what was coming out by taking it down on earphones? A. No.

Q. Well, tell us how? A. The two instruments were installed more or less simultaneously, and the tests were made practically simultaneously for the purpose of determining which instrument worked the better, it being the intention that the stenographer be assigned to the better instrument, if one should work better than the other; as it developed, one didn't work at all. 315

Q. That is, as I understand it, what you did when you went in there that afternoon was to hitch up what the previous witness had just testified to be dismantled? A. That is right.

Q. To make that set complete? A. Yes, sir.

316 Q. And then you installed this other and separate device? A. Yes, sir.

Q. And you heard nothing said over the carbon circuit? A. Oh, it is possible that a word here and there might be distinguished, that you might know something was going on, but there was no continuity or anything that would be of any value in any way.

Q. Well, was it used in any way? A. No, it wasn't used at all.

Q. Not even as a guide as to what might be coming over the other one? A. No, it didn't have to be.

Q. Now the door was closed all this time, I suppose? A.
317 Oh, yes; you mean the entrance door to the corridor?

Q. Are you sure of the date? A. Yes, sir.

Q. How are you sure? A. Because I have got some pencilled notes in my pocket that I made at the time.

Q. And you have refreshed your recollection by looking at those notes? A. I have.

Q. Were you there on April 9th? A. No, sir, I was not.

Q. Was any other member of the Federal Bureau of Investigation there to your knowledge? A. I haven't the faintest idea.

Q. I beg your pardon? A. I say I haven't any idea.

318 Q. Was it cold weather or hot weather or in between? A. I didn't make any point of noting it or recalling it.

Q. Well, do you recall the condition of the weather? A. Just a normal day so far as I can recall.

Q. A normal day in early April? A. Yes.

Q. And to your best recollection you wouldn't say that it was a cold day? A. No, there was nothing about it to make me recall it. There was no reason for my making any note of the point, of trying to remember it.

Q. Well, when you pulled out that microphone, back into 1508, did you recognize or feel whether or not there was any heat turned on? A. I don't know.

Q. You do not know? A. No. 319

Mr. Fielding: That is all of this witness.

Cross examination by Mr. Corbin:

Q. Were you there continuously from 2:30 until five? A. Until somewhat later than that.

Q. Till after 5? A. I think it was possibly six or six-thirty when I left.

Q. Were you there continuously then from two-thirty to six-thirty? A. Yes; I didn't leave the room.

Q. And did you make notes as to the time when the stenographer arrived? A. I believe I did (examining paper). 320

Q. Are you referring to your original notes now? A. I am referring to a set of notes that I dictated immediately after coming back, but I didn't make a note as to the time of the arrival of the stenographer.

Q. May I see what you just looked at?

Mr. Walsh: I object to that if your Honor pleases.

The Court: Yes, I sustain the objection.

Mr. Corbin: May I ask that the paper from which the witness refreshes his recollection be marked for identification?

The Court: Yes, it may be marked for identification. 321

(Marked Petitioner's Exhibit 2 for identification.)

Q. And what was the yellow paper that you had with this paper that has just been marked for identification? A. Those are the pencilled notes that I made during the time that I was installing the equipment.

Q. On the very day in question? A. Yes, sir.

Q. And they are in the same original form now that they were then, is that right? A. That is right.

Q. And they assume or you assume them to recount what

322 was going on at the time, as it occurred, is that right? A. With regard to what I was doing, with regard to the making of the installation.

Q. Well, matters that you have covered in your direct examination here today? A. That is right.

Q. May I see that paper? A. No, sir.

Mr. Walsh: I object to that, if your Honor please. He hasn't refreshed his recollection from that paper. It is the other paper which did refresh his recollection, which is now marked Petitioner's Exhibit 2.

The Court: Let me see that paper and then I can
323 independently rule on that. As I recall, his answer was he testified that he made no memorandum of the arrival of the stenographer. (Paper handed to the Court.)

Yes. I will sustain the objection and not require the witness to produce the document to counsel for the defendant. I would like to say for the benefit of the record that I have read the notes, and so far as the trial court can see, there is no relevancy in this particular document to the investigation that is now being cross examined about. But it does contain other matters which should not be disclosed at this
324 time, and I cannot see where it could possibly throw any light upon the question now being inquired about, and for that reason I will decline to require him to produce it.

Mr. Corbin: May I respectfully except?

The Court: Yes.

Mr. Corbin: And may I claim the right and privilege to determine for myself the materiality and relevancy of the matter contained in the paper. I just state for the record so that my position may be clear.

The Court: Yes. You may have the full ad- 325
vantage of any exception that you desire.

Mr. Corbin: That is right.

The Court: The question that was propounded to him was whether or not he had any memorandum as to what time the stenographer appeared, and I believe that he replied to it that he had no such record. There is not anything in the document, as read by the Court, which would contradict that, so I will sustain the objection.

Mr. Corbin: Well, my point in asking to have an inspection of it was not confined to that one subject. My thought was, and my suggestion now is, that I 326
have a right to examine any paper containing any notes made by the witness at the time of the transaction, as to which he first asked about on direct examination. I claim that as a matter of right.

The Court: Very well. I will overrule your objection and allow you an exception.

Mr. Corbin: And that relates to all of his testimony, he having already told us that this paper contained notes made at the time as to the matters concerning which he has been asked about on direct examination.

Mr. Walsh: It is not relevant at this time, if 327
your Honor please.

The Court: Yes, it is not relevant at this time. That is the ground upon which I sustained it. The only question before the Court now is as to the admissibility of any testimony that is claimed to have been obtained by the detectaphone or a dictaphone, and the notes made at that time might or might not be relevant, but having examined those, I do not see the relevancy of it. I could see where probably it would be improper to let the defense see that docu-

28 ment at this time, so I will sustain the objection of the Government, decline your request, and of course the witness being on cross examination, if I am in error about it, if it is admissible, you have your exception.

Mr. Walsh: May I ask at this time that the second sheet of paper, the yellow piece of paper, be marked for identification so that we won't have any question about what Mr. Corbin has been talking about?

The Court: Yes.

(Marked Petitioner's Exhibit 3 for identification.)

29 Mr. Mintzer: May that objection and exception accrue to all defendants?

The Court: Yes, that accrues to all defendants.

Mr. Corbin: Now, if your Honor please, may I refer to Exhibit 2 for identification and have a ruling on it, as to my right to see that? I claim the absolute right to see the paper, it having been marked for identification.

The Court: That is Exhibit 2, that is the yellow sheet?

Mr. Corbin: No, that is the white sheet.

The Court: The white sheet. Let me see that 30 white sheet. (Same handed to the Court.)

Mr. Walsh: I object to that on the same grounds. It is not relevant at this time, as far as this preliminary motion is concerned.

The Court: The Court has read Exhibit 2 for identification, and after having read same is of the opinion that it has no relevancy to the question now being investigated on, in the consideration by the Court. It does contain matters which should not be furnished to the defendants at this time upon this particular hearing, and it being the opinion that the instrument has no bearing upon this question I

sustain the objection of the Government and decline 331
to let counsel for the defendants see the exhibit, and return it to the witness and allow all the defendants all exceptions to this ruling.

Mr. Corbin: May I similarly suggest, for the record, my attitude with respect to this paper, namely, that it is a matter of right in the defendants and in those that I represent, particularly to have their counsel determine for himself the relevancy or materiality of the paper in order that he may be then equipped to determine whether cross examination thereon is proper to continue?

The Court: Yes, you may state it on the record. 332
Let the record so show, and the Court declined to permit the request to see it.

By Mr. Corbin:

Q. Did you make any notes that day on anything that you heard that day over the microphone that was installed in the hole in the wall? A. No, sir.

Q. Did you make any report to any superior of yours in the government concerning anything you did at that place that day with respect to that phone in the wall? A. Yes.

Q. To whom? A. To the agent in charge of the New 333
York office of the F. B. I.

Q. Have you a copy of that report? A. Yes, sir.

Q. Will you produce it?

Mr. Walsh: I object to that on the same grounds as before, that it is not material or relevant at this particular time, and in the further reason it is confidential anyway, any record that he made.

The Court: Do you have that report with you?

The Witness: That is the white paper you just examined.

334 The Court: I sustain the objection. It is the paper I just examined.

Mr. Corbin: Oh, that is the one that was marked Exhibit 2, the white paper.

The Court: Is that the one that was marked Exhibit 2?

The Witness: Yes, sir.

Q. I did not understand it. That is the only report in writing that you made, is it? A. That is right.

Q. Did you hear anything over that phone that you could distinguish? I am referring now, you understand, 335 to the one in the hole in the wall? A. No.

Q. When did you commence listening over that phone? A. Shortly after we arrived at the building, I would say possibly fifteen minutes after the time of our arrival.

Q. That would be about 2:45 that you first tried it out at all? A. Yes sir.

Q. Meanwhile, what were you doing? A. Making the connections for both instruments.

Q. That is, attaching earphones? A. Attaching ear phones to the amplifier, attaching the microphone wire to one amplifier and fixing the wall microphone to the wall and attaching that to the amplifier.

336 Q. Turner told you where to put it on the wall? A. No.

Q. It was only in one place, wasn't it? A. No, I was—as I recall, I was told a general picture of the room as it was, and I tried different spots on the wall to determine where it would work best.

Q. That is, Turner told you where he thought the best spot was in view of what he had learned of the locations in the other room, is that right?

Mr. Walsh: I object to the form of that question, if your Honor please.

The Court: I will overrule the bojection.

A. I don't know whether Mr. Turner told me that or 337
whether he told me how the room was laid out or whether he told me specifically where to put it. I don't recall.

Q. Substantially he told you the layout, didn't he, of 1509? When I say the layout, I mean the location of the desk and the chairs? A. I believe so.

Q. And was Mr. Schulman's desk where he sat, near the wall between 1509 and 1508? A. Well, I wouldn't exactly know.

Q. Where was the desk located? A. So far as I know, I don't know where it was located. It is my recollection that I was told it was somewhere toward the end of the 338
room, near the window, that is, the end of the room away from the corridor of the building.

Q. And where, with reference to the Chambers Street side, that is, the window in 1508, did you put the microphone? A. About six to ten feet away from the wall in which the windows were located.

Q. And how long a room was that 1508? A. About 20 feet.

Q. That was about halfway down the wall, is that right? A. That is right.

Q. So that it was about opposite the middle of the room of 1509? A. Approximately, yes.

Q. Now is that about where Turner told you to put it? 339
A. I don't recall if he told me to put it there or not. I remember testing the wall—

Q. Was that about where he told you that the thing might be located to the best advantage? A. I don't recall.

Q. Whether he told you that or not, you don't recall? A. I remember—

Q. That is, you— A. I remember we had such a discussion and I remember after the discussion I tested the whole area of the wall.

Q. And you found that it was right? A. And found

340 that it operated most advantageously in the particular spot where I left it.

Q. Where he told you? A. I testified that I don't recall him telling me where to put it.

Q. Well, you had a discussion with him as to the lay-out in the other room; that is right, isn't it? A. So far as I can recall, yes.

Q. That is your best recollection, right? A. Yes.

Q. And he indicated somewhere on the wall of 1508 that he thought would be about the right spot in view of that layout, is that right? A. I don't recall that he did.

Q. You won't say that he did? A. I won't say that he
341 did or didn't.

Q. And thereupon you did some testing for yourself and came back to the spot where you put it on the wall with the adhesive, right? A. Yes, sir.

Q. Now, was that about the spot that he indicated or may have indicated previously?

Mr. Schachner: Your Honor, I object to this question. The witness has testified before that he does not recall any indication whatsoever as to a particular spot.

Mr. Corbin: That is right.

342 The Court: Well, this is cross examination. I will overrule the objection.

Q. Doesn't that refresh your recollection? A. No, sir—will you read the question?

Q. (Question read.) A. I testified that I don't recall that he did or did not indicate any specific locations.

Q. All right, but he told you, did he not,—and I think you told us this already—that he told you the layout in the other room for the purpose of your understanding the better where they should be put on the wall; that is right.

isn't it? A. Not entirely. I don't know the purpose. He 343
told me generally—

Q. Well, what did he tell you where the desk and the chairs were in the other room, if it wasn't to indicate to you a likely spot for the location of the microphone?

Mr. Walsh: Now I object to this as argumentative, and it calls for a conclusion. He has already testified on five occasions that Turner did not tell him, and he has already testified that by experimentation he placed the microphone in the most advantageous position, so far as this witness was concerned.

The Court: I will overrule the objection. This 344
is cross examination. He is allowed wide latitude.

Mr. Walsh: I understand that, if your Honor please, but it is repetitious.

The Court: I will overrule the objection.

The Witness: Will you read that, please?

Q. (Question read.)

Q. You heard what the Government's man said just now, did you.

Mr. Walsh: My name is Mr. Walsh.

Mr. Corbin: Thank you. I did not know it.

345

Q. You heard what Mr. Walsh said just now? A. Yes.

Q. Didn't you? A. Yes, sir.

Q. You haven't got to keep that in mind. Just tell us the fact. Is it or is it not true that when you went there that day Turner told you in substance that he had been in the other room and knew the layout of 1509? A. That is true.

Q. Of course; and didn't he tell you that such and such a place, maybe halfway down the wall, would be a likely location for your microphone in view of the layout in the other room? A. I don't recall whether he did or not.

346 Q. Well, all right. A. The chances are the most probable thing that he didn't.

Q. That is about as helpful as if I told you that the most likely thing is that he did, so we don't get anywhere. You don't recall one way or the other, and we will leave it that way, is that right? A. That is the situation.

Mr. Corbin: That is all.

Redirect examination by Mr. Schachner:

Q. You testified, did you not, both on direct and on cross examination that you took the microphone, went along with
347 it, along the wall, until you found some spot where the reception was good, is that right? A. Yes, sir.

Q. Tell me, in order to do that, to go along the wall and find a likely spot, did you need anybody telling you where a likely spot was? A. No. In fact it would be better if you weren't told. That is, your judgment wouldn't be affected by outside influences.

Q. Yes, but certainly you did not need anybody telling you where was a good place to put the thing? A. No, sir.

Mr. Corbin: I did not get the last.

(Answer read.)

348 The Witness: There was no necessity whatever.

Q. And if somebody had told you where a good place was, would you have taken his judgment? A. No, sir.

Mr. Corbin: What was that?

The Witness: No, sir.

Q. You would not have accepted the judgment and you would have conducted your own experiments as to where the best place was? A. That's right.

Q. Indeed, you remember definitely that you did con-

duct your own experiment where the best place was? A. Yes, sir. 349

Mr. Schachner: That is all.

Recross examination by Mr. Mintzer:

Q. May I ask you this, what is the maximum thickness of a wall through which you could hear with one of those instruments that you used? A. It depends upon the material of which the wall is made. It depends upon whether it is hollow. There are number of factors. There is no definite answer to the question.

Q. Suppose you have a solid wall. How thick can it be to hear? A. I couldn't say. 350

Q. Do you know whether this wall was solid or not? A. No, sir; I don't.

Q. Do you know how thick it was? A. No, sir.

Mr. Mintzer: That is all.

Recross examination by Mr. Corbin:

Q. At what hour was it that afternoon that you actually began listening and taking notes of any conversation in that room? A. I would say about—the listening began in the tests some time around three o'clock, I would say. 351

Q. Yes. That was the earliest? A. Yes, sir.

Q. You made no note of the substance of those conversations, did you? A. Not that I recall, no, sir.

Q. The purpose of those talks was to locate the individuals, was it? A. No. The purpose there was to set up the equipment and see that it was functioning properly.

Q. And when did the recording commence? A. After the arrival of the stenographer.

Q. And nothing before? A. No, sir.

Q. And no notes made of the substance or words of

352 any conversation before the stenographer came in? A. Not that I recall.

Q. Either by you or Turner, so far as you know? A. Well, I don't know about Turner. I don't think that I did.

Q. Was he making notes before the stenographer came? A. I say I don't know if he was or not.

Q. You were there, weren't you? A. Yes, sir.

Q. You mean you don't recall now? A. That is right.

Q. Would your notes that you made at the time reveal that fact? A. The notes that I made at the time cover only my own actions.

353 Mr. Corbin: All right.

The Court: I believe, gentlemen, we will impanel the jury at this time and let them go until tomorrow because we have, I think, some forty jurors here and we won't have use for the balance, so if that suits you, gentlemen we will impanel the jury and complete this hearing this afternoon or at least go along a while longer. We will take a few minutes recess.

(Recess, during which the jury was impaneled.)

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354 HAROLD P. TURNER, called and sworn as a witness for the Government, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Turner, you are a special agent employed by the Federal Bureau of Investigation, are you not? A. I am.

Q. Mr. Turner, you remember listening on the listening devices installed in room 1508, the building at 277 Broadway? A. I do.

Q. Did you on the afternoon of April 7th listen to a conversation taking place in the next room over an apparatus that was connected with a microphone that was

situated in a hole in the wall? A. I listened over one 355
for a while that was in a hole in the wall.

Q. And was that on that afternoon of April 7th? A. It was.

Q. And could you distinguish what was said on the other side, or rather in the adjoining room over this microphone? A. Only an occasional word was distinguishable.

Q. Did you make any notes about anything that you listened to over this microphone? A. I did not.

Q. That is, as to the one in the hole? A. In the hole, that is what I am speaking of.

Q. You had been present the night before when that 356
microphone was installed, had you not? A. The one in the hole in the wall?

Q. Yes. A. I was.

Q. And at that time you also tried it out, did you not? A. I did.

Q. Was it working satisfactorily then? A. It was.

Q. Now did you ever at any time make out any continuous conversation that came over that microphone that was situated in the hole in the wall, except that one time late at night when you listened to find out whether it would work? A. That was the only time.

Q. That was the only time you could make out anything? 357
A. It was.

Q. And did you see agent Schroeder dismantle it? A. I did.

Q. And do you remember what time that was? A. I would say it was around about four o'clock in the afternoon of April 7th.

Q. You were present when another microphone was installed in the wall, were you not? A. I was.

Q. Did you indicate any specific spot where that microphone should be installed? A. I don't recall that I did.

Q. Do you recall whether or not you saw agent Schroeder

conduct an experiment to find out which spot would be most advantageous to place a microphone on? A. I did.

Q. Do you know from your knowledge of such listening devices whether the spot at which you can obtain the best reception depends solely upon the position of the person in the other room, or depends also upon other factors? A. It depends upon other factors.

Q. Now can you mention some of those other factors? A. Well, the construction of the wall, the thickness of the wall.

Q. If a wall were to contain beams or steel structure, would that influence the position of the microphone? A. It would.

Q. And generally the structure of the wall is one of the important factors that has to be taken into consideration in placing a microphone against it, is it not? A. That is right.

Q. All the conversations which you remember and which you could get in any coherent fashion were listened to over a listening device that was connected to a microphone that was merely placed against the wall and that was not in the hole in the wall, is that right? A. That is right.

Mr. Schachner: That is all.

Cross examination by Mr. Fielding:

Q. You were one of the agents who was in the private offices of Mr. Schulman the night before, were you not? A. Yes, sir.

Q. And you were one of the gentlemen who were let in by the superintendent of the building or the night engineer? A. On the night of April 6th.

Q. Without any authority of Mr. Schulman? A. No, I believe not.

Q. And you got a pretty good idea of Schulman's office layout, did you not? A. I had at that time, yes, sir.

Q. And you still had the next day? A. Yes, sir. 361

Q. Now, did you have any recording device in 1508? A. We had an amplifier in 1508.

Q. Or anything on which a written transcript of any kind or a record would be made? A. No recording device. We had a stenographer there.

Q. Well, so that there won't be any mistake, let me put it this way, that whatever you claim to have heard through the instrumentality of this crystal, so-called crystal microphone, was taken down stenographically? A. That is right.

Q. And that is the only record which was made at that time of such matters as you claim to have heard as emanating from 1509 and 1510 on the afternoon of April 362
7th? A. Yes, sir.

Q. 1937. A. Yes, sir.

Q. I think you said a few moments ago that agent Schroeder or Schoenfeld was the man who dismantled the microphone, where the installation was done in the baseboard between the hole in the wall of 1508 and 1509? A. Yes.

Q. Am I correct about that? A. Yes—Mr. Schroeder.

Q. In other words, when you went in there it had to be first connected up, did it not, the amplifier? A. The amplifier had to be connected to the microphone.

Q. And that was the condition that the agent who first 363
testified this morning left it in when he left that room? A. He left the wire from the microphone there.

Q. And then that was connected up? A. To the amplifier.

Q. Now when did you bring that second apparatus with you? A. On the afternoon of April 7th.

Q. The other and first microphone installation had been satisfactory the night before, had it not? A. It worked satisfactorily the night before.

Q. And did you attempt to use the first apparatus on

364 the 7th, in the afternoon, before you found out that it wouldn't work and then got the other set? A. No. We brought both of them along with the idea of installing both of them to see which was the most satisfactory.

Q. And naturally you had general conversation with the gentleman who just preceded you on the stand, another agent? A. At that time?

Q. Yes. A. Yes.

Q. And you did discuss with him the layout of Mr. Schulman's offices? A. I don't recall that I did.

Q. Well, would you say that you did not? A. We just talked generally, not anything specifically.

365 Q. That gentleman who installed the second microphone had never been in Schulman's office, had he? A. No.

Q. And you had? A. Yes, sir.

Q. Now, was the third man in the group at that time—had he been in Schulman's office before? A. Which one are you speaking of now?

Q. Well, I don't know. The three of you? A. On April 7th?

Q. Yes. A. Mr. Rubenstein?

Q. Yes. A. I don't believe he had, although I couldn't say.

366 Q. Well, do you recollect the identity of the gentlemen who were in room 1509 on the evening of the 6th, after ten o'clock? A. That was Mr. Ransom and myself.

Q. Just the two of you? A. Yes, sir.

Q. Was Mr. Ransom present the next day? A. No, sir.

Q. So that if any information were to be given to Mr. Schroeder, or the gentleman who just preceded you, as to the layout of Schulman's office, you were the only one on April 7th in the afternoon who could furnish that information? A. Yes, sir.

Q. How long were you there? A. When?

Q. On April 7th, in the afternoon? A. I would say

from about two-thirty until possibly six-thirty. 367

Q. And you testified the same as the preceding witness, that the stenographer had a head set with two earphones, you had one and the other gentleman had the other? A. That is right.

Q. And did you make any notes? A. I made a few.

Q. And the stenographer took down stenographically what he was hearing? A. Yes, sir.

Q. Now at the same time that that transpired, was the other set, the carbon microphone set, set up or had it been disconnected? A. It had been disconnected.

Q. You first attempted to use that as a means of obtaining information? A. Yes. We set them both up for the 368 same purpose.

Q. And one of them wouldn't work? A. One of them just didn't work.

Q. There were no discs made of any kind? A. No, sir.

Q. Nothing but the stenographic notes and the notes which you made, which you have just testified about? A. That is all.

Mr. Fielding: That is all.

Cross examination by Mr. Corbin:

Q. Did you make any notes of what you did that after- 369 noon? I am not referring to recording of any conversations that you heard over the telephone. A. Yes. I came back to the office and I dictated a memorandum.

Q. And that was a memorandum that contained a recital, as you then recalled it, of each thing you did that afternoon from the time you went into the room—

Mr. Walsh: If your Honor please, I am going to object to this question as immaterial and irrelevant.

The Court: I will overrule the objection to this

370 question. He is asking him if he recorded or made a memorandum. I will let him answer that question.

Q. Is that right? A. I dictated a memorandum, yes, sir.

Q. Well, my question was a little broader than that. Was it a memorandum which accounted and recorded what you did that afternoon? A. Yes, sir.

Q. I am referring to April 7th? A. April 7th.

Q. From two-thirty until you left, which was what time? A. Which was around about six-thirty.

371 Q. And did you make any other memorandum of what you did that afternoon besides the one you have just referred to? A. No.

Q. You made no pencilled notes at the time? A. Yes, I believe I did.

Q. And preserved them? A. Well, till I dictated my memorandum.

Q. What was that? A. I say, till I dictated my memorandum.

Q. And then what? A. I believe I still may have them.

Q. Are you looking on the table here for them? A. I was just wondering whether they were there or not.

372 Q. Do you think you gave them to counsel for the Government? A. I probably have—I know they were supposed to go in the file.

Q. They are in custody of counsel for the Government? A. Of the Bureau.

Mr. Walsh: I object to this whole line of inquiry so far as the notes.

The Court: Yes, I sustain the objection.

Mr. Corbin: I except.

Q. Did you record on any paper, either the pencilled notes that you have referred to made at the time, or

on the typewriter or report which you dictated, after you left the premises, anything about the dictaphone in the wall not working? A. Yes, sir, the one in the aperture in the wall. 373

Q. The one in the hole in the wall, yes. You put something in one or both of those memorandums about that instrument, did you? A. In one of them I recall distinctly.

Q. Is that the dictated one or the notes you made at the time? A. In the dictated one.

Q. You haven't made any revision of that dictated memorandum since? A. I have not.

Q. Where is that memorandum now? 374

Mr. Walsh: May I press the same objection as I have made before, if your Honor please?

The Court: I will overrule the objection. I will let him answer, if he knows where it is.

A. It is supposed to be in the files of the Bureau.

Q. With the other pencilled memorandum? A. With the reports in this case, yes.

Q. Including the pencilled memorandum that we have been talking about? A. They are part of the same file.

Mr. Corbin: Now there isn't any claim that those papers are not available, is there? 375

Mr. Schachner: No.

Mr. Corbin: All right. Then for the purpose of raising the question, I ask, if your Honor please, that he produce or be directed to produce this memorandum for my inspection.

The Court: Do you have those memoranda with you?

The Witness: I do not.

Mr. Walsh: I think that it is immaterial, and I object to the request. At this time it is irrelevant.

376 The Court: I do not know about the materiality. He says he does not have them. Do you know where they are?

The Witness: I expect they are over in the United States Attorney's office.

The Court: You may see, Mr. United States Attorney, if you have them.

Mr. Schachner: Are these the memoranda you refer to (handing)?

The Witness: Yes.

Mr. Schachner: He says this is the memorandum (handing to Court).

377 The Court: This is the memorandum that was dictated, that you had?

The Witness: Yes, sir.

(Discussion off the record between Mr. Schachner and the witness.)

Mr. Schachner: The witness does not seem to think that these additional notes, which seem to me to have some relevancy to what you, your Honor, are looking at, are the notes he was asked about. In order to be perfectly frank with the Court, I want to submit these notes also to the Court's attention,

378 irrespective of whether the witness thinks or does not think they were the notes he was asked about. It is only my desire to be perfectly candid with the Court.

The Court: Very well. I will take these two and ask him questions about them.

(Court examined papers.)

The Court: This one is a report dated April 9, 1937, which is the one he said was the one he dictated. I am going to let the clerk mark it for identification, and I will return it to the Government's attorney this afternoon, and permit that to be in-

spected and cross examined about. There are parts 379
of it that I do not think throw much light upon it, but in order to have that before an appellate court, in case it should reach an appellate court, and to have everything before it that would not prejudice either side, I am inclined to think I will let that go in, unless there is some serious objection on the part of the Government that I cannot see at this time. Of course there are one or two sentences in there that it might be necessary for me to exclude from view of the defense at this time because it tends more to the merit of the case than this hearing.

Now these other documents that have been handed 380
to me by the Government's attorney, another dated April 8th, is upon the merits of the case, and I do not think that it would be competent at this time, nor would it throw any light upon the question presently before the Court. I think it would be improper to permit the defense to have the benefit of the contents of these documents prior to the trial of the case, and I am going to take a recess at this time until ten-thirty tomorrow.

Mark that one.

(Marked Petitioner's Exhibit 5 for identification.) 381

The Court: As I say, I will hear you if there is any objection on it, but I cannot see that there is any prejudice on the trial of the merits. I will be here tomorrow morning before I rule on it.

Mr. Fielding: Your Honor, I have a memorandum on the question involved, and also a decision of Judge Byers on this very point, which was just handed down two weeks ago.

Mr. Walsh: May we have copies of that?

Mr. Fielding: It is just a copy of an opinion. It is on file here in the court.

382 Mr. Walsh: You also gave a memorandum. May we have a copy of yours?

Mr. Fielding: You did not give me one of yours.

Mr. Walsh: We didn't have any.

The Court: Very well, gentlemen. We will take a recess until ten-thirty tomorrow.

(Adjourned to July 16, 1940, at 10.30 a. m.)

UNITED STATES OF AMERICA

—against—

383 MORTON GOLDMAN, THEODORE GOLDMAN, JACOB SCHULMAN and SAMUEL IRVING KANDELL.

New York, July 16, 1940, 10.30 a. m.

Hearing resumed.

The Court: Does counsel for the Government object to the inspection of each of those documents I was examining yesterday afternoon?

Mr. Schachner: Yes, your Honor. The Government objects to them, and if I may be heard—

384 The Court: Well, I have given thought to it. I don't care to hear from you. I will sustain the objection for the reason that the matter of the reference to the memoranda that was made by the witness was injected by the counsel for the defendant by questions asked him if he did make them, and the witness had not used the memorandum on the stand, and so far as the Court knows had not used them at all. It is my conception of the law that if the witness does not use any memorandum, makes no reference to them while on the stand, that opposing

counsel cannot make the memorandum competent by asking questions about them, so I will decline the request to permit counsel for the defendant to examine them, and I will allow you an exception, every one of them. 385

HAROLD P. TURNER, resumed the stand.

Cross examination continued by Mr. Corbin:

Mr. Corbin: This ruling, if Your Honor please, applied to the white paper which was described by the witness and identified as a memorandum that he dictated I think a day or two after the occurrence. 386

The Court: Yes, the one referred to as shown by the stenographer's notes.

Mr. Corbin: You will recall, Judge, that in addition to that paper there were some pencilled notes that were not marked for identification.

The Court: Yes.

Mr. Corbin: Which were handed up.

The Court: Yes. There were two pencilled notes, I believe, handed up to the Court at the Court's request for inspection, and the Court did inspect them and ruled in accordance with the ruling heretofore made this morning. 387

Mr. Corbin: Then may the record show that my attitude with respect to those is the same as with respect to the other paper marked for identification, in respect of which I have been denied?

The Court: Yes, the record may so show.

Mr. Corbin: And an exception accordingly.

The Court: Yes.

Mr. Corbin: Thank you.

Mr. Schachner: Your Honor, may I ask respect-

388 fully that the record be clarified at this point? Let the record show that the witness made no reference to these notes, that as far as the record before your Honor is concerned, the only reference made to these notes was the fact that I had to pick them out of some file and handed them to you. Now as far as the record is concerned, no relevancy whatsoever of those notes has been established.

The Court: The record may show as you stated, and that there was, after the production of the first document which was identified as an exhibit for identification, in the testimony of this witness, an off-the-
389 record discussion between counsel for the defendants and the government and the witness, during which time the assistant district attorney was showing to the witness the two pencilled memoranda which the witness made, which were not applicable or pertinent to the questions asked by the defendant. Thereupon the assistant district attorney stated that he wanted to be perfectly fair and frank and exhibited and handed to the Court these two pencilled memoranda which the assistant district attorney said might or might not be responsive to the question. The Court
390 examined the two documents, which were in pencil and ascertained that they pertained to the merits of the case, and at that particular time was not satisfied as to whether any of the documents should be required to be produced or not. The Court took a recess late in the afternoon until ten-thirty this morning, at which time the Court ruled that counsel for the defendants are not entitled to inspection of any of these reports to his superior officers.

By Mr. Corbin:

Q. Mr. Turner, you recall the two pencilled memoranda and the yellow paper which his Honor has just referred to

and which were shown to you by the assistant district attorney yesterday, don't you? A. Yes, sir. 391

Q. Mr. Turner, when did you make those memoranda?

Mr. Walsh: I object to that as irrelevant, if your Honor please, at this time.

The Court: Yes, I sustain the objection.

Mr. Corbin: Exception.

Q. Now, Mr. Turner, I suppose that this occurrence you have told us about on your direct examination, which happened in April of 1937, down at 277 Broadway, is only one of a great many similar investigations of the same general character that you made in the course of your official duties, is that right? A. You mean in connection with the installation of listening devices? 392

Q. Yes. A. Not so many, no, sir.

Q. Well, what do you mean by not so many? A. I mean the use of listening devices isn't frequent.

Q. You have done that on a number of occasions in the past three years or more, haven't you? A. What do you mean by "a number of occasions"? How many do you consider a number?

Q. Well, how many do you consider "not so many"? A. Well, I should say possibly, since then, three or four. 393

Q. And is it your job, or part of your duties, to handle that kind of an investigation, an investigation through instruments of the character described by you? A. When the necessity requires.

Q. I know, but it is the handling of such instruments that is a part of your work, is that right? A. Yes.

Q. And has been for years? A. Oh, for several.

Q. All right. Now in addition to your investigation in this particular case, about to be tried, we can agree, can't we, that you have had investigations since then of many other cases? A. Not many.

394 Q. In many other places? A. A few.

Q. Well, have you been in the service of the Government for the last three years? A. I have.

Q. As what? A. As an investigator.

Q. And you have only had a few cases in three years? A. No, I have had several—many cases—but not of this nature.

Q. You mean bankruptcy? A. That, and the use of listening devices.

Q. Getting away from the devices now, the fact is that you have been active during the past three years since this occurrence in April of 1937, in your work as an in-
395 vestigator? A. Yes, sir.

Q. And that covered many different situations in many different places, didn't it? A. Yes, sir.

Q. It is your general habit and duty to make some memoranda with regard to what you do in particular matters; right? A. Yes, sir.

Q. And it is your custom when a case comes up three years after an investigation to examine the file and the notes made at the time in order to refresh your recollection about what happened on that occasion? A. Yes, sir.

Q. Otherwise you couldn't recall, could you, and that
396 applies to this case, doesn't it? A. Yes, sir.

Q. And the memoranda that have been marked here for identification you looked over them in order to acquaint yourself with the details of what they contained, so that you could tell us what occurred on the occasion in question?

Mr. Walsh: I object to that as irrelevant at this time.

The Court: I will overrule the objection.

Q. That is true, isn't it? A. I did.

Q. On this particular job, namely, the one on trial here,

who was your superior? A. You mean the agent in charge 397
of this particular case?

Q. Well, that or the man who gave you instructions to do this work? A. Mulherin.

Q. And your first work on it occurred on the evening of April 6, 1937, is that right? A. Yes, sir.

Q. And was it on that day that you first got your instructions from your superior officer? A. I believe it was, yes, sir.

Q. What were those instructions?

Mr. Walsh: I object to that, if your Honor pleases.

The Court: Yes, I will sustain the objection. 398

Q. I ask you specifically, were you instructed by your superior to install a listening device or devices in the premises occupied by Mr. Schulman at 277 Broadway, in order to listen in on conversations in his office? A. I was instructed to assist in it.

Q. Well, you were there on both days, namely, the 6th and 7th of April, were you not? A. Yes, sir.

Q. Your instructions were to go there with someone else and do that job? A. Yes, sir.

Q. And what you did was done pursuant to those instructions from that superior? A. Yes, sir. 399

Q. And that applies to both days, is that right? A. Yes, sir.

Q. All right. Were you instructed as to what type of listening device to install? A. No, sir.

Q. That subject was left to your own discretion, wasn't it? A. Not mine.

Q. Well, to you and your associate? A. Yes, sir.

Q. And you and your associate determined upon the carbon disc inserted in the hole by the pipe as the one to be tried first, is that right? A. Well, the other one connected to the wall, the contact microphone was one that

400 could be installed when it was ready for use. I believe that we intended, possibly to use both of them.

Q. Oh, I see, so that your intention was to use—that is, to put in both and use either or both, as occasion dictated? A. Yes, sir.

Q. But it was one job to put both of them in, is that your point? A. Yes.

Q. In order to get the sound, is that right? A. That is, through more than one device. There were two, if necessary.

Q. Yes. Now after you had put the first one in on the 6th, did you go back to your superior for any instructions
401 as to whether or not you should take down the detectaphone on the 7th? A. The detectaphone set was the one used in the contact mike on the wall.

Q. That is right. Perhaps you did not understand my question. On the night of the 6th you put in the one that had the disc in the hole in the wall? A. Yes, the carbon.

Q. You call that the carbon? A. Microphone.

Q. The carbon microphone, all right. And when you left that, that night it was in working order ready to be hooked up and used the next day? A. It appeared to be
402 satisfactory.

Q. Yes. The next day, without any further instructions from your superior, you took, when you went to the premises, the detectaphone, is that right? A. As I recall, I believe we did, on our own initiative.

Q. Understanding and believing that that was a part of the single job that you had to do, to wire that room; right? A. Yes, sir.

Q. In short, you did not go back to your superior to say, "Now I put in one but I am going to take down the other also as a part of the job". You did that yourself, understanding that that was a part of the work and part

of your duties under your first initial instructions?. A. I 403
believe we decided on that, yes, sir.

Q. Well, that is a fair statement of it, isn't it? A. Yes, sir.

Q. All right. What was the name of that stenographer? A. Mr. Bodinger.

Q. Bodinger? A. Yes, sir.

Q. Is it true that there were two sets of headphones, earphones? A. For the detectaphone.

Q. And was it one of those two sets which was first hooked up to the carbon microphone? A. No, sir.

Q. What means did you have and use to listen on April 404
7th over the carbon microphone? A. We had head sets for that.

Q. Then how many head sets altogether did you take down to 1508? A. I don't recall definitely. There were either three or four; I wouldn't say for sure.

Q. All right. Were they all taken down on the 7th? A. Yes, sir.

Q. One of them didn't come down on the night of the 6th when you made the installation of the first listening device? A. There was a head set used on the night of the 6th to test the carbon microphone.

Q. That is what I understood. Did you take that back 405
with you? A. Yes, sir.

Q. You didn't leave that on the premises that night? A. No, sir.

Q. So that the following day you brought it or another one back, plus a couple of others, is that right? A. Two or three others.

Q. All right. Now on the 7th did you see or can you recall whether the stenographer used any head set on the carbon microphone? A. He did not.

Q. You are sure of that? A. Yes, sir.

Q. Who did the listening on that instrument? A. Well,

406 when it was first set up again on the 7th I used it for a while and maybe somebody else used it for a while, while testing it.

Q. You don't know? A. It could have been any one of the three or four that were there, that could have been listening in on.

Q. Including the stenographer? A. No, it wasn't necessary for him. It was just being set up for his use to be satisfactory.

Q. Well, who were the three or four others besides yourself there on the 7th? A. Well, there was agent Rubenstein, Mr. Schroeder and myself and it happened to be
407 three, besides Mr. Bodinger.

Q. What you mean is that either or both of the other two agents might have used that device? A. When it was first being installed?

Q. Yes. A. Set up.

Q. And that remained set up and ready for such use as could be made of it until after four o'clock that afternoon? A. Yes, sir, shortly after four.

Q. Where do you hail from? A. I am up here from Miami.

Q. Well, no, not this trip, but where do you come from?
408 A. From Nebraska.

Q. How long have you been in the Government service? A. Almost six years.

Q. You made an affidavit in this case, didn't you? A. Yes, sir.

Q. Do you recall the substance of it? I am not asking you for it; I am just wondering if you recall it generally? A. Generally, yes, sir.

Q. It had to do with the installation of these listening matters or devices in the premises in question? A. As I recall, it had something to do with it, yes.

Q. Do you happen to recall, without my showing it to

you, or showing you a copy, that you made no mention of this second wall device or detectaphone as you termed it here? A. I think that related only to the one installed in the hole in the wall, the carbon microphone. 409

Q. You understood that the motion was to suppress evidence, didn't you? A. I don't just recall what the correspondence was sent down by this office.

Q. You mean the affidavit that you made was mailed down to you? A. There was a letter forwarded down to my Miami office, requesting that an affidavit be signed by me, yes, sir.

Q. I was wondering, was the affidavit prepared up here or prepared by you in Miami? A. It was prepared here. 410

Q. And you signed it after it was prepared here? A. Yes, sir.

Q. And mailed it back? A. Yes, sir.

Q. You did not feel in signing that affidavit that you should say anything about the device that you now say, or at least that the Government now claims was the only one used on that occasion?

Mr. Walsh: I object to the form of that question and also on the further ground that it is immaterial. The affidavit itself is the best evidence. If he wants to test the credibility so far as the affidavit is concerned, I think he should do it in that form rather than go on in this immaterial way. 411

The Court: I will overrule the objection.

Mr. Corbin: Perhaps the question had better be read.

Q. (Question read.) A. Well, I was not preparing the case.

(Answer read.)

Q. Well, I know that. That doesn't answer it. Did

412 you feel that your statement was frank and complete without any reference at all to the only device that you now say was usable or used on that occasion?

Mr. Walsh: I object to the form of that question as calling for a conclusion.

The Court: I will overrule the objection. I think that is material, going to his credibility.

Mr. Walsh: Then I will withdraw my objection.

The Court: Of course the witness is on cross examination. I think it is certainly material. He has made an affidavit and did not mention the listen-
413 ing device that was used on the wall, but simply mentioned the other. Of course you have him on redirect examination if he has any explanation about it, but he is on cross examination now so I will overrule the objection.

A. The affidavit related only to the microphone installed in that aperture in the wall.

Q. So that in signing it you were only following instructions contained in the letter? A. The affidavit correctly related the facts in connection with one microphone.

Q. So far as it went, but you did not say anything in
414 the affidavit about that instrument having been dismantled and taken out and not used at all, did you? A. No, I don't recall. I don't think the affidavit said anything about that.

Q. No. Nor did you mention anything in any way about the other device which you say you did use on the 7th of April, did you? A. No, sir.

Q. Now did the letter that you got—have you got that letter? A. No, sir.

Mr. Corbin: Have you got a copy of it?

Mr. Juskow: We haven't got it.

Mr. Corbin: It must be in the file. Isn't it in the case file? 415

Mr. Juskow: No.

Q. Did the letter just say, "Sign this affidavit, swear to it and return it," or did it explain why it was limited to a device never used? A. I don't recall whether it did or not.

Q. Well, do you say now that what you did with respect to that affidavit was merely and only following the instructions contained in the letter? A. I believe it requested me to read the affidavit; if the facts set forth therein were correct, I should sign it and return it. Anything else in it I don't know that I can recall. 416

Q. Weren't you informed in that letter or otherwise that you were making an affidavit in answer to a motion to suppress evidence on the ground that evidence was illegally obtained? A. It may have, but I couldn't recall definitely.

Q. You understood at the time that you made the affidavit that that was the general purpose and the nature of the motion, didn't you? A. It is possible.

Mr. Walsh: I object to the form of that question, if your Honor please, regardless of what the affidavit was signed for. It calls for an operation and a conclusion by this witness for what purposes the affidavit was going to be submitted, which is, as a matter of law, to be prepared by the district attorney, and whatever the facts were related in the affidavit were in the judgment of the district attorney sufficient for the purposes of this motion, so I think that the question is improper and immaterial at this time. 417

The Court: I will overrule the objection. If he knows. Of course if he does not know, state that he does not know.

Mr. Corbin: I think he answered.

(Record read.)

418 Q. That is your best recollection? A. It was possible that is what it was to be used for. I didn't know definitely.

Q. When you sent the affidavit back, having signed it in the form prepared in New York, did you write a letter enclosing it? A. A letter of transmittal, yes, sir.

Q. Do you recall the contents of that letter? A. No, I don't.

Mr. Corbin: Is that letter around?

Mr. Juskow: It is in the files.

Mr. Corbin: But not presently available, is that right?

419 Mr. Juskow: Yes.

Mr. Corbin: All right.

Q. Did you, in terms or substance, say in that letter, "I have signed the affidavit and am mailing it back, but this device referred to in the affidavit was never used, and the affidavit contains nothing about the one that was used"? Did you say anything like that? A. I do not recall whether I did or not.

Q. So that there may be no question about it, I would like to ask you about the wall upon which this detectaphone was applied with the adhesive tape. That is the wall between 1508 and 1509, is that right? A. Separating the

420 two.

Q. Yes. Whether that was Schulman's wall or not, I don't inquire, but on the face of it, which was next to 1508 that you saw, as you were in 1508, was that face, that wall a solid one from top to bottom and from left to right as you stood looking at it? A. Yes, sir.

Q. I mean there was no door or window or other opening? A. Nothing except that hole in the baseboard.

Q. No vestige of any opening except the pipe in the baseboard? I don't mean that. I mean in the wall itself. It was a solid wall? A. Yes, sir, it was at that time.

Q. Now I took occasion, since you were here yesterday, 421
to have some measurements made. Perhaps we can agree generally on them without further bother. Have you any fair idea as to how deep that room 1508 is from the door where you entered to the window looking on to Chambers Street? A. No, I couldn't say.

Q. Was that one complete room from door to window or was there a partition? A. I believe there was a partition.

Q. Halfway down? A. I believe there was.

Q. Opposite a post and between two posts, rather, about halfway down from the door to the window. Do you recall that it extended some 7½ inches out into the room? A. I think there was a division in the room itself. 422

Q. Yes, so that the room 1508 was divided in the same way by a partition into two rooms; right? A. Yes, I believe so.

Q. And it was the front room with the window opening on to Chambers Street that you did your work in?

Mr. Walsh: I object to the characterization "doing the work in."

Mr. Corbin: Well, I will withdraw that.

The Court: I will overrule the objection; I will let him answer that. I think it is very clear about what he meant, "doing the work." 423

Mr. Walsh: Well, I did not want any other implication, if your Honor please.

A. There was a window in the part where we were working.

Q. Yes. Yesterday—it may have been you or someone else—you referred to the point where the microphone was put on the wall with adhesive tape as being about halfway down the wall. Was it you that gave that description of this location? A. I think not.

Q. Well, whether or not, I don't recall. But will you

424 please tell us how far from the window and along the wall, between 1508 and 1509 it was that that microphone was located; your best judgment? A. I couldn't say definitely. It was probably six feet, five feet to seven feet, somewhere around there.

Q. Our measurements indicate, for what you may accept them or reject them, that that wall is about twelve feet long from the post to the Chambers Street wall. You understand that is the wall on which you put the microphone, it is about 12 feet long. Now that would mean, if that were so, that you located the instrument about halfway down the wall from the post to the window. Is that your
425 best recollection?

Mr. Walsh: If your Honor please, I object to the form of that question. The testimony thus far is that he did not locate it, that Mr. Schroeder, the technical man, did it, but so far as where it was placed, we have no objection.

The Court: Very well. I will sustain the objection.

Q. You did not put it on the wall? You did not put the tape on the device, is that right? A. No, sir.

426 Q. Well, I don't care, but where was it? Was it about halfway down the wall? A. It was, as I recall, approximately.

Q. From post to window? A. Approximately, yes.

Q. All right. And about how high from the floor? A. Well, as I recall, it must have been about five foot or five and a half, somewhere around that. I just don't remember.

Mr. Corbin: Thank you very much.

By Mr. Mintzer:

Q. In this affidavit that you signed, do you recall men-

tioning whether or not you came back on April 7th? A. No, I don't recall. 427

Q. Well, I show you a copy of this affidavit (handing); tell the Court whether you stated it in that affidavit?

Mr. Schachner: May I see that? It is not the original.

Mr. Mintzer: I said it was a copy.

The Court: Do you wish to see it before he reads it?

Mr. Mintzer: Do you want to see it?

Mr. Schachner: Yes.

The Court: Yes, you may see it. 428

(Same handed to Government counsel.)

Mr. Mintzer: Are you satisfied that that is a copy, Mr. Schachner?

Mr. Schachner: Yes.

Q. Now you do not mention in that affidavit, do you, that you came back to Mr. Schulman's office on April 7th? A. I do not.

Q. You did not do any listening on April 6th, did you? A. Just enough to test the set.

Q. I mean there was nobody in Mr. Schulman's office on April 6th when you were there? A. I think not. 429

Q. So you actually started listening on April 7th to any conversations? A. Yes, sir.

Q. And yet you don't say a word in this affidavit about being there on April 7th, is that correct? A. That is right.

Q. Now do you say anything in this affidavit about taking out the first microphone? A. No, sir.

Q. Do you say anything in this affidavit—

Mr. Walsh: I object to the form of that question. The affidavit speaks for itself. Evidently if he cannot see it there it is not there.

430 The Court: I will overrule the objection. It will be competent upon cross examination to go into the credibility of the witness and also test his memory and so forth, so I will let him examine it.

Q. Your answer is no, is it not? A. No.

Q. Do you say anything in this affidavit that the first microphone that you installed on April 6th did not work? A. No, sir, I didn't.

(Paper marked Petitioner's Exhibit 6.)

Q. Mr. Turner, do you know what a turntable is? A.
431 No, I don't know.

Q. Do you know what you call the device that is used to record the voice as it comes over the amplifier, on a disc? A. That would hold a record?

Q. Yes. A. Yes.

Q. Do you know what that is called? A. That is possibly a turntable.

Q. Did you have a turntable in room 1508 either on April 6th or April 7th? A. No, sir.

Q. Now as I understood you to say yesterday, you left at about six-thirty on April 7th? A. It was around that time, yes, sir.

432 Q. Did you take off that microphone from the wall? A. Yes, sir.

Q. Did you remove all the instruments then? A. Yes, sir.

Q. Did you come back again to that room? A. After April 7th?

Q. Yes. A. Yes, sir.

Q. What date? A. On April 14th.

Q. Now, what instruments did you bring in on April 14th? A. The detectaphone.

Q. Which detectaphone: the one that you used on April 6th or the one that you used on April 7th? A. The one that I used on April 7th against the wall.

Q. You used it the same way as you did on April 7th? 433
A. Yes.

Q. Who was present with you on April 14th? A. I believe Mr. Rubenstein and Mr. Bodinger.

Q. What time did you get there on April 14th? A. I believe it was in the morning. I couldn't recall.

Q. And what time did you leave on April 14th? A. Possibly—I just cannot say.

Q. Well, have you any record from which you could refresh your recollection? A. Not with me, no, sir.

Q. You made a record of the time when you got there, when you left, did you not? A. I dictated a memorandum.

Q. And where is that memorandum? A. In the files of 434
the bureau.

Mr. Mintzer: May we have that memorandum?

Mr. Walsh: It is objected to, that that be produced at this time, if your Honor please.

The Court: Yes, I will sustain the objection.

Q. Well, did you leave before noon or after noon? A. I could not say without referring to that memorandum.

Q. Did the three of you leave together? A. I believe we did, yes, sir.

Q. Did you come back after April 14th? A. I did not, 435
no, sir.

Mr. Mintzer: That is all.

By Mr. Fielding:

Q. You are familiar with the use of this detectaphone on a number of occasions. You think, or is it your opinion that the instrument that you used was sensitive enough to pick up the voice of a person talking into a telephone in room 1509?

Mr. Walsh: I object to the form of that question, if your Honor pleases. It calls for an opinion.

436 The Court: I will overrule the objection. It calls for an opinion but if he can give his opinion I will let him answer the question.

Mr. Walsh: If he will rephrase the question I will have no objection.

Mr. Fielding: I would like that question to stand.

The Court: Yes. I will overrule the objection.

A. Well, now, which end of the conversation?

Q. The talker in room 1509? A. Yes, sir.

Mr. Fielding: That is all.

437 The Court: Any redirect?

Redirect examination by Mr. Schachner:

Q. Mr. Turner, how many people were with you on April 7th when you were in room 1508? A. Mr. Bodinger, Mr. Schroeder, Mr. Rubenstein and myself.

Q. And how many head sets were there altogether for both microphones? A. There were three or four.

Q. Do you happen to know whether the head sets used for the carbon, to be connected with the carbon microphone, can be used for the microphone placed against the wall? A. I believe it can; yes, sir.

438 Q. Do you remember between what hours you tested that carbon microphone, the one that was stuck in the hole? When did you start testing it on April 7th and when did you stop? A. Let me see. I believe we arrived there about two-thirty, so it must have been from about a quarter to three or three to between four-thirty and five.

Q. Mr. Turner, I show you Petitioner's Exhibit 6, which is the affidavit or the copy of the affidavit which you signed and which you testified was sent to you for signature. I ask you whether a single word in that affidavit is untrue (handing)? A. No, sir.

Q. I ask you further whether it is your general custom 439
to rely upon the legal draftsmanship of the assistant United States attorneys charged with drawing legal documents, if you find that they express or if they are wholly truthful? A. Yes, sir.

Q. Did you change as much as a comma in this affidavit before signing it and returning it? A. No, sir.

Mr. Schachner: That is all.

Recross examination by Mr. Corbin:

Q. Then your attitude with respect to affidavits is that if they are just exactly accurate, just as far as they go, 440
that you don't touch one jot or tittle of them, is that right? A. If they correctly relate the facts.

Q. If they are drafted by the United States district attorney?

Mr. Walsh: No, that isn't what the witness said, if your Honor please. I ask that it be stricken out. The witness said if they are correct, they sign it.

The Court: And now he is asking him another question, "if they were drafted by the United States District Attorney." I will overrule the objection. That is another question, as I understand it.

Mr. Corbin: Yes. 441

Q. (Question read.) A. Yes, sir.

Q. So that you don't conceive it to be your duty to suggest that an affidavit that you are asked to sign may not state the whole truth on that subject. You sign it if it states the truth as far as it goes.

Mr. Walsh: I object to the form of that question, if your Honor pleases.

The Court: I will overrule the objection.

442 A. If it correctly relates to the facts, to the item to be covered in the affidavit.

Q. Well, the item to be covered in the affidavit here, as you understood it, was whether you had gotten evidence illegally in the premises 277 Broadway. You understood that, didn't you, in general? A. Yes.

Mr. Walsh: That calls for a conclusion and I object to that.

The Court: I will overrule the objection.

A. Yes.

443 Q. And when you signed that affidavit, you knew you were signing something that related to an instrument that you now say was never used in taking any evidence for use in this case, didn't you? A. This particular microphone was installed in the baseboard of the wall and that is what the affidavit related to.

Q. You felt when you signed that that it was a fair statement of the situation with respect to the installation of listening devices in the wall? A. I assumed the United States Attorney knew what he wanted to cover in the particular matter.

Q. So that it was his idea and not yours that nothing
444 be said about the other device, is that what you mean? A. He knew which phase he wanted to cover and that related to it.

Q. You assumed for some reason that he wanted to leave the rest of the story out and therefore you made no suggestion to the contrary.

Mr. Schechner: Your Honor, I object to this question. It is not testing the credibility of the witness in any way. The witness has a perfect right to rely upon the judgment of the district attorney as to the paper.

The Court: That is true, that is what he answered, but I will overrule the objection. On cross examination the courts have repeatedly held that a wide latitude is allowed, and this is a type of case where I think that latitude should not be curtailed. I am going to allow him wide cross examination. Of course a witness understands, and counsel for the Government understands, that if there is anything that is brought out that needs explanation, if an explanation be given, they have a right to make it, but I think the question is competent. I will overrule the objection. 445

The Witness: Will you read the question? 446

Q. (Question read.) A. I didn't assume anything.

Mr. Corbin: All right. May I inquire for the record, Judge, of counsel for the Government, when those letters could be made available?

Mr. Walsh: Well, we are going to object.

Mr. Corbin: I know that will raise the question after we see the letter, but can we know where they are? Could we get them in a few hours?

Mr. Walsh: No basis has been laid for the production of the letters in the first place, and I think we can save time because we are going to object to the production of any letters, and I think we can save a lot of time. 447

The Court: Very well. I will sustain the objection.

Mr. Corbin: Judge, we knew nothing about those letters until we inquired from the witness.

The Court: Well, I don't think those letters will be competent or that they can throw any light on it, or that they will be required, so I will sustain the objection.

448 Mr. Corbin: I respectfully except. May we concede all around, gentlemen, that this affidavit, marked Petitioner's Exhibit 6, and verified by the witness on May 3, 1940, was the only affidavit submitted in behalf of the Government in opposition to the motion for suppression?

Mr. Walsh: Mr. Clerk, do you have the original one there?

Mr. Corbin: Well, subject to correction, will you concede that that is the fact?

Mr. Schachner: Subject to correction.

449 Mr. Fielding: Maybe I can make a statement to clarify matters. I argued the motion before Judge Goddard and when I handed my papers up to the court, Mr. Schachner handed me his affidavit, which was the only affidavit offered in opposition to the motion.

The Court: Very well, gentlemen. The original affidavits, aren't they filed in the case, and won't the file itself show what was actually filed?

Mr. Schachner: Well, we will concede it for the time being.

The Court: Very well. Let it be conceded that
450 that is true, as suggested, subject to correction, and you may examine the files, and if there are any other affidavits in the file, the record will so show.

By Mr. Corbin:

Q. After April 14th, which you have referred to, were you ever back in that room or in those premises in connection with any investigation by way of listening devices or otherwise? A. I was not.

Q. Or anyone else in the Government service on the same mission, so far as you know? A. I couldn't say.

Q. So far as you know? A. I wasn't there.

Q. So far as you know? A. Yes. I knew that there was another— 451

Mr. Schachner: Your Honor, I object to this question because the witness has testified that he was not there. Any other statement that he might make would clearly be based on hearsay.

The Court: Yes, I will sustain the objection.

Mr. Corbin: Judge, in view of what the witness has said and the state of the record now, I renew my application for permission to examine the memoranda that the witness prepared and dictated—this applies to all of it—on the ground that it now appears that he used that memorandum in preparing to testify and that without its use he would have been unable to give us the information that he has given us on the stand. 452

Mr. Walsh: Is that necessary?

The Court: You may renew your motion and I will overrule it again.

Mr. Corbin: Thank you. Exception.

Q. Did you have a turntable there on the 14th? A. No, sir.

Mr. Corbin: That is all. 453

The Court: Anything further?

Mr. Schachner: No.

SIDNEY S. RUBENSTEIN, called and sworn as a witness on behalf of the Government, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Rubenstein, you are a special agent of the Federal Bureau of Investigation, are you not? A. That is correct.

Q. You were present in the afternoon of April 7th in

454 the company of agents Turner and Schroeder and the stenographer Bodinger, in Room 1508 at 277 Broadway, were you not? A. I was.

Q. You listened over some listening device to conversations taking place in the adjoining room, which I take it was room 1509, did you not? A. I did.

Q. Did you listen over a listening device connected to a carbon microphone inserted in a hole in the wall alongside of the steam pipe? A. Yes, sir, I did.

Q. What did you hear when you listened over that device? A. Well, I heard considerable noise, similar to static on the radio, hissing and other outside noises. At times I
455 would hear some words, inaudible.

Q. Did you hear anything that was coherent enough to form an opinion or to be able to say what the conversation was in the next room over that device we are now talking about? A. I did not.

Q. You also listened to a device that was connected with a microphone placed against the wall, did you not? A. I did.

Q. And you received that coherent evidence by listening to that device, did you not? A. Yes, sir.

Mr. Schachner: That is all.

456

Cross examination by Mr. Fielding:

Q. Did you hear any telephone conversation? A. Yes, sir.

Q. How long were you there? A. I was there from about two-thirty p. m. until about 6:45 p. m.

Q. Were you back there on the 14th? A. Yes, sir.

Q. When were you there then? A. I got there about 9:45 a. m.

Q. How long did you stay there? A. We stayed there till—I would say until three or four o'clock.

Q. And you heard conversations then? A. Yes, sir.

Q. Did you hear any telephone conversation? A. Yes, 457
sir, I believe I did.

Q. Now did you, if you know, return the apparatus to room 1508 as a separate matter, after the time you had been there on the 7th? A. You mean we left it on the 7th?

Q. Did you leave it there on the 7th or have it taken away? A. We took everything away.

Q. And when you returned there on the 14th you brought the apparatus back with you? A. That is right.

Q. How did you get into the room? A. We got in with a key that we obtained from Mr. Raynor.

Q. And did you return the key after you left there on the 7th? A. I don't recall whether we did or not. 458

Q. Well, do you have any idea that you might have kept the key all that time? A. Might have kept it, yes, sir.

Q. And after the 14th did you return again? A. Yes, sir.

Q. When? A. On April 21, 1937.

Q. And who was with you at that time? A. Special agent M. R. Griffin, and Mr. N. Bodinger.

Q. N. what? A. Bodinger.

Q. The stenographer? A. Yes, sir.

Q. Now did you get in with a key? A. Yes, sir, we did.

Q. Did you have the key? A. Yes, sir.

Q. Did you get it from Raynor that day? A. I don't think I did, sir. I think I already had it. 459

Q. You kept it in your possession? A. Yes, sir.

Q. From the last time you were there on the 14th? A. Yes, sir.

Q. And who fixed up the listening device on that day? A. Special agent Griffin and myself.

Q. When did you get there? A. On the 21st.

Q. Yes. A. Some time in the afternoon. I don't know the exact time.

Q. Would you call it two or three o'clock? A. I would say so, about in that.

460 Q. And how long did you stay there? A. My recollection is about six-thirty, about in there.

Q. And took your apparatus away with you? A. Yes, sir.

Q. And did you hear conversations on that day? A. Yes, sir.

Q. Telephone conversation? A. Probably did.

Q. Now, did you have any turntable with you on the 21st? A. No, sir.

Q. So that notations that were made of anything that you heard were taken down by the stenographer? A. Yes, sir, and myself.

461 Q. And by the other agents who listened in? A. Myself only.

Q. Griffin didn't listen in? A. No, sir.

Mr. Schachner: Your Honor, I would like to object to that line of questioning on the ground that the defense is not properly entitled to know in just what shape or form evidence was obtained. It seems to me that at this point the defense is not entitled to know whether or not recordings were made of conversations listened to.

The Court: I will overrule the objection. He has
462 already answered those questions. Read what was the last question which referred to the objection.

(Record read.)

The Court: I will overrule the objection to what was on before. There was no further question asked now.

Q. Was that the last time you entered room 1508? A. No, sir, it was not.

Q. When did you go there again? A. April 26, 1937.

Q. Who was with you that time? A. Special agent Griffin and Mr. Bodinger.

Q. All these visits were made at the direction of your superiors, were they not? A. Yes, sir. 463

Q. Now on the 26th, when did you get there? A. In the afternoon some time.

Q. And how long did you stay? A. Oh, I would say it was some time after six, six-thirty, about in there.

Q. And again did you pick up a conversation in that room 1509? A. Yes, sir.

Q. Again a telephone conversation? A. Yes.

Q. You again removed the apparatus when you were there? A. Always.

Q. Now did you get the key from Raynor that time, if you recollect? A. I really can't remember; I either had it or got it from him. I don't remember which. 464

Q. Well, when did you finally turn the key in? A. That I don't remember. I might never have turned it in. I don't recall.

Q. Were you there after the 26th of April? A. No, sir; that was the last time.

Q. At any time did you ever have a key to room 1509? A. Never.

Q. And do you know if at any time in your presence any agent of the Government had such a key? A. Never saw an agent in my presence with a key, no, sir.

465

Mr. Fielding: That is all.

By Mr. Corbin:

Q. Where was the telephone located in room 1509? A. I couldn't tell you, sir. I never was in there.

Q. Well, you went on April 7th; you were with Turner, were you not? A. Yes, sir.

Q. And Turner told you where the telephone was, didn't he? A. No, sir.

Q. What is that? A. No, sir.

466 Q. Were you Turner's superior or not? A. No, sir; we were all alike.

Q. What is that?. A. We were all alike; the same seniority.

Q. Both working under the same instructions from Mr.— A. Mulherin, yes, sir.

Q. And I suppose you were here during Mr. Turner's examination as a witness here? A. Yes, sir.

Q. I mean present in this room? A. Yes, sir, that is right.

Q. And your answers would be similar if I asked you with respect to memoranda prepared by you at the time and
467 reports dictated? A. Yes, sir.

Mr. Corbin: May I make the same application with respect to this in order to cut the time short?

The Court: Yes, you may.

Mr. Walsh: And may I make the same objection?

The Court: The Court will sustain the objection and deny the request for inspection to be permitted; and I will allow you an exception. That applies to all of the defendants.

Mr. Corbin: I thought that would be a welcomed short cut.

468 The Court: Yes.

Mr. Corbin: It will protect everybody.

The Court: Yes. You have the point saved. I make the same ruling.

Mr. Corbin: Thank you. That is all.

The Court: Any further cross examination? Any redirect?

Mr. Schachner: No redirect.

Mr. Corbin: Judge, may I have just a moment?

The Court: Yes.

(Discussion among counsel for defendants.)

Mr. Corbin: I hate to ask it, but there is somebody

here that we have to talk to. If we could have a five- 469
minute recess it might short-cut our course.

The Court: Very well, we will take about a three or four-minute recess.

Mr. Corbin: Thank you very much.

(Short recess.)

The Court: Any further cross examination of this witness?

Mr. Corbin: Not of this witness. May I recall another witness for a question or two?

The Court: Very well.

Mr. Corbin: Is Mr. Ransom here?

470

JAMES RANSOM, recalled, testified further as follows:

Recross examination by Mr. Corbin:

Q. Mr. Ransom, referring to the night of April 6th, you were in room 1509, were you not? A. Yes, sir.

Q. And Mr. Turner was with you that night? A. In that room? I don't recall whether we were both in the room at the same time, but he was with me generally there, yes.

Q. You were in and out both 1508 and 1509 that evening? A. Yes, that is correct.

Q. Where was the telephone located in 1509? A. I do not recall. 471

Q. Well, did you make any memorandum about the telephone at the time? A. No, sir.

Q. Or the telephone wires? A. No, sir.

Q. You did not put anything down in writing on the subject of telephone wires at all? A. No, sir.

Q. Who went to the distribution rack covering the telephone connections for tenants on that floor?

Mr. Walsh: I object to the form of that question, if your Honor please. There is no testimony that anybody did go to the distribution rack.

472 The Court: Yes. I will sustain the objection. It assumes that somebody did it.

Q. Did you go? A. Not to my recollection.

Q. You know what I am talking about, don't you? A. I think I do, yes, sir.

Q. You say not to your recollection? A. That is correct.

Q. Did Turner go? A. Not to my knowledge.

Q. Will you say that you did not go on the evening of April 6, 1937? A. I won't say that I didn't; I won't say that I did. My purpose there was to install a microphone.

Q. You can't say that you didn't go to that spot? A. To
473 the best of my recollection I didn't.

Q. You inquired about it, didn't you? A. I don't recall making any such inquiry.

Q. Turner inquired about its locatoin? A. Not to my knowledge.

Mr. Corbin: That is all, Judge.

Mr. Corbin: I would like to recall Mr. Turner for a few questions.

HAROLD P. TURNER, recalled, testified further as follows:

474 Recross examination by Mr. Corbin:

Q. You know where the telephone was in room 1509, don't you? A. I don't recall exactly the location of the telephone, no, sir.

Q. Well, you knew that night? A. I beg your pardon?

Q. You knew the night of the 6th and the day of the 7th where it was? A. I may have seen it in the room, yes.

Q. And you knew where the telephone wires went in that room? A. No, sir.

Q. Or you did then? A. No, sir.

Q. What? A. No, sir.

Q. You did not follow any telephone wires around that room that night? A. No, sir. 475

Q. Did you go to that distribution rack covering this phone on that floor? A. I did not.

Q. What about the conversations that would come over the detectaphone? I am not asking you the substance of them or anything about what they were, but when you say that you heard telephone conversations, did you hear both ends of the conversation? That is what I want to know. A. No, sir.

Q. And when you were listening and testing the microphone, the carbon microphone in the hole in the wall, you could not hear, but even when it was operating O. K. you could not hear but one end of the conversation, could you? A. Even if it had been working O. K., you could have heard only one end of that conversation. 476

Q. That is right, but with this other instrument on the wall, you could hear both ends? A. No, sir.

Q. If it were placed right? A. No, sir.

Q. You mean to say that you never heard over a dictaphone both ends of a telephone conversation? A. I have not.

Q. Well, have you had much experience with the use of them? A. You mean using the contact microphone?

Q. Yes, near a telephone wire? A. No, sir. 477

Q. You never tried to pick up a conversation over a telephone wire with the use of a detectaphone? With the use of a contact microphone? A. No, sir.

Q. Well, what kind of a microphone was this? A. It was a contact microphone placed over against the wall.

Q. And if there was a telephone wire on the other side of the wall do you mean to say that you couldn't pick up both ends of the telephone conversation? A. I never have.

Q. Did you ever try? A. No, sir.

478 Q. Whether that could be done or not, you say you don't know? A. I don't know.

Q. Are you familiar with induction pickup of telephone wires? A. I have heard of it, yes, sir.

Q. Did you ever experiment with it? A. With other apparatus, yes, sir.

Q. What kind of a mike was this? What kind of a microphone was it that you put on the wall with adhesive tape? A. It was a crystal microphone with a sensitive needle to it.

Q. And with the use of that particular type you never experimented to find out if both ends of a telephone conversation could be picked up through a wall? A. No, sir.

479 Q. Where the telephone wire was on the other side of the wall? A. No, sir.

Mr. Corbin: All right, that is all.

NATHANIEL BODINGER, called and sworn as a witness for the Government, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Bodinger, you are a stenographer employed by the Federal Bureau of Investigation, are you not? A. I am.

480 Q. And you were present in room 1508 of 277 Broadway, on April 7, 1937, and on various occasions thereafter, were you not? A. I was.

Q. And did you listen to a listening device capable of picking up conversations that were taking place in the adjoining room, 1509? A. That is correct.

Q. Did you ever listen to any other listening device except one that was connected to a microphone that was placed against the wall separating the two rooms, that is, 1508 from 1509? A. I made an attempt to.

Q. You did make an attempt to? A. That is right.

Q. And was that attempt successful? A. No, it was not. 481

Q. Could you distinguish anything that you could take down in stenographic notes? A. No, there wasn't sufficient connected conversation that could be heard.

Q. You made certain stenographic notes of conversations, did you not? A. Yes, I did.

Q. Can you tell us whether all of these stenographic notes which you took were taken of a conversation to which you listened by the use of the listening device connected to the microphone placed against the wall? A. They were all taken through that microphone.

Mr. Schachner: That is all. 482

Cross examination by Mr. Fielding:

Q. You made notes as you may have heard voices, is that right? A. That is right.

Q. And those notes or transcripts of them are still available and in existence? A. They are.

Q. And among them did you record any telephone conversations that you heard? A. I did.

Q. And that occurred the night or the days of April 7th, 11th, 21st and 26th, is that correct, to the best of your recollection? A. Yes.

Q. And as the other witnesses have testified, as to your presence with them at that time, their testimony is substantially correct? A. That is so. 483

Q. And you were there. A. Yes.

Mr. Fielding: That is all.

Mr. Corbin: No cross.

Mr. Schachner: I would like to ask for the record of counsel whether or not there is any objection to having Mr. Schroeder return to Cleveland?

Mr. Corbin: Well, he was the technician, wasn't he?

484 Mr. Schachner: He was.

Mr. Corbin: There is no objection on my part but perhaps there may well be, and I think there will be some question about—some testimony, perhaps, about the operation of these instruments, and the power and ability of them which Mr. Schroeder might be needed for.

Mr. Walsh: We will have another expert on that.

Mr. Corbin: Well, let me ask Schroeder a couple of questions.

The Court: Very well. Let Mr. Schroeder come to the stand.

485

HAROLD O. SCHROEDER, recalled, testified further as follows:

Recross examination by Mr. Corbin:

Q. You know what induction pickup is on the telephone, don't you? A. Yes, sir.

Q. That can be done from telephone wires, can it not? A. Yes, sir.

Q. And it can record or produce for recording or any other use, conversations which occur on the telephone, that is, both ends of the conversation? A. Yes, sir.

Q. Now I am sorry, but I have got to ask you: were you
486 down on April 7th for the first time? A. April 7th was the only time I was there.

Q. That is right. On that occasion did you make any search for or look at what we call here the distribution rack covering the telephone service on that floor? A. I did not.

Q. And were you there when the location of the microphone disc or the detectaphone was located on the wall? A. Yes, sir.

Q. Do you know or don't you know whether it was in proximity to a telephone wire connecting with the telephone in 1509? A. I have no idea.

Mr. Corbin: I have no further questions.

Redirect examination by Mr. Walsh: 487

Q. Mr. Schroeder, is the apparatus that was used, the detectaphone, just placed against the wall? Is that the same type of an apparatus which you would use if you were going to get a telephone conversation, both ends of the telephone conversation through an induction coil? A. No, sir, it is not.

Q. It is an absolutely different device, is it not? A. That is right.

Mr. Walsh: That is all.

By Mr. Corbin: 488

Q. Well, it is a device, is it not, Mr. Schroeder, that if it be put near a telephone wire will, by that induction method, pick up both ends of the telephone conversation from the wire? A. Yes, sir.

Mr. Corbin: That is all.

By Mr. Schachner:

Q. Mr. Schroeder, when you just answered this question did you mean to say that this device which you used on this occasion was on that could pick up both ends of the telephone conversation? A. Oh, no, it could not.

Q. The device used in this particular instance about which you testified could not conceivably pick up both ends of a telephone conversation solely by being near a telephone wire, is that right? A. That is right. 489

Mr. Schachner: That is all. That concludes the evidence of the Government.

Mr. Corbin: We have no evidence.

The Court: You have no rebuttal evidence. Both sides rest?

Mr. Fielding: Defendants rest.

Mr. Schachner: Will counsel now state for the

490 record whether the testimony of Mr. Schroeder will be required now at the trial?

Mr. Corbin: It will not, so far as we are concerned.

The Court: Gentlemen, I do not see that an argument on the question, if there is any here, would help the Court so very much, if any. We are all more or less familiar with the principles involved. It comes down to a question of finding of facts. In weighing the testimony of witnesses the rule is well settled that it is the duty of the court or the trier of the facts, whatever the tribunal be, to reconcile the 491 testimony of all witnesses with the truth if it can be done.

Perjury is never imputed to any testimony if any other reasonable construction can be placed upon the testimony, and in weighing the testimony the interest of all witnesses or any witnesses in the outcome of the trial should be considered by the court as well as other rules governing the weight of testimony, so applying all of those rules I think the fair finding of fact here, and the only reasonable conclusion that can be reached from all of this testimony is that the agents first undertook to install 492 a device known as a carbon type, by which to put the wires through into the office 1509, and that on the test on the 6th that it worked, but that no testimony or no evidence was obtained on that day. That on the 7th they came back and that device did not work, and that they took no evidence, transcribed no evidence of any kind through that device; that it was abandoned and dismantled. That they then installed a device by attaching some instrument to the wall in room 1508 through which or by which certain conversations or parts of them at least were

heard. As a conclusion of law I will hold that if any testimony were obtained from that first device, by which the wires were extended into the office of 1509, that if there had been any evidence obtained through that method I would have sustained an objection to it and suppressed that evidence, because I think it was an invasion of the defendant's constitutional rights. I think that was a trespass when they went into the office of 1509 by the method by which they did and undertook to install that device. And if any testimony had been obtained through that device it would have been suppressed. 493

I find as a fact, however, that no testimony was obtained through that device, and from the testimony of the witnesses for the Government produced, all of them say that none was obtained. If it should develop at any time in the trial of the case that any testimony was obtained through that device, why, I would sustain an objection to it. 494

The other device that was installed was by lawful entry into room 1508. Insofar as these defendants were concerned it was lawful. The Government agents attached this listening device to the wall in 1508, and heard some conversations. I think those conversations, if they are relevant to the issues involved upon the trial of the case on its merits, are competent and should not be suppressed; that there is no connection between the two devices, and the fact that they unlawfully entered the office of the defendants on April 6th, aided them in no way whatever in attaching the device to the wall in 1508 on the 7th of April; that I find from the testimony that they could have just as easily and just as well, by the method that they did adopt, of trying out various places on the wall in room 1508, and determined 495

496 and located the space upon which this device should be attached there, as if they had never been in 1509. and that therefore the constitutional rights of the defendants were not violated by going into 1508 and there attaching listening instruments and taking down any conversations that they might have heard over that device solely, and that if the conversations that were heard are relevant to the issues to be heard on the merits of the case, then the testimony would be admissible and the objections of the defendants on the ground that their constitutional rights were invaded would be overruled.

497 I will therefore overrule the motion of the defendants to suppress the testimony insofar as the testimony was obtained over the listening device that was attached to the wall in 1508; that I will also overrule the motion of the defendants for the suppression of any testimony thus far shown, for the reason that the testimony shows, without conflict, that no testimony or evidence of any kind was obtained by the Government over the device or through the device that had been installed first, known as the carbon device, and by which they had unlawfully entered the office of the defendant at 1509.

498 Now in weighing the testimony, gentlemen, I will say briefly that I have not overlooked the testimony of the defendants' witnesses. I think their testimony is to be reconciled with all the testimony of the Government. There is not such a variance that it becomes necessary for the Court to say that the witnesses for the defense were untruthful. I think they related the facts just as nearly as they recalled them, but I think they were in error as to the size of the wires and as to everything that transpired about which they testified in detail, but they were

endeavoring to tell the truth and that their testi- 499
mony is to be reconciled with that of the Govern-
ment agents because the Government agents admit
practically what the witnesses for the defendants
testified to, except as to the size of the wires, and
probably a few other variances that I think are
more or less immaterial.

So I will find that the motion of the defendants
to suppress this testimony should be overruled.

Now is there any further request for any further
finding of fact? I will be glad, gentlemen, to make
any finding you desire. If there is any additional
finding to be made or if you desire to be heard, I 500
will hear you, but I might say that I am of course
more or less familiar with all the recent decisions of
the Supreme Court, including this one of wire tap-
ping and the obtaining of evidence by unlawful
searches and seizures.

Those are my conclusions of law and findings of
fact as I see it at this time. I do not think that an
argument would change me on it, and when I do
have my mind reasonably well made up, why I have
always found that counsel on both sides appreciate
an announcement from the court to that effect rather
than making an extended argument. I have made 501
an announcement, and if counsel think I am so
clearly erroneous about it, why I will hear them,
and of course if I am convinced that I am wrong I
will change my ruling, but that is the way the court
feels at this time.

Mr. Fielding: Well, not in any way to presume
that I feel that the Court hasn't decided the issue
exactly as it saw it, and for the record I would like
of course to except to your Honor's ruling, and if
there is a suggestion as to an additional finding of

502 fact, might I say that the testimony of the Government clearly shows that there was an interception of telephone messages which in my opinion are just as much a violation of the Federal Communications Act of 1932 and 1933 as it would be as if those wires were tapped.

The Court: Well, I do not so construe it, Mr. Fielding. I think that that is not the type of telephone wires within the meaning of the Communications Act.

Mr. Fielding: Well, I just want that for the record.

503 The Court: I will make that finding of fact against you and give you an exception. That applies to all the defendants.

Very well, gentlemen. We will take a recess until two-fifteen, and if you desire anything further to call to my attention, I will be glad to make a further finding of fact.

(After Recess. 2:15 p. m.)

The Court: Very well, gentlemen. Any further requests for any findings of fact of anything on the motion that I had this morning?

Mr. Corbin: No, your Honor.

504 The Court: Very well.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

505

C. 107-2.

UNITED STATES OF AMERICA

vs.

MORTON GOLDMAN, THEODORE GOLDMAN, JACOB SCHULMAN and SAMUEL IRVING KANDELL.

Before: HON. SIDNEY C. MIZE, D. J., and a Jury

New York, July 15, 1940: 4:30 P. M.

APPEARANCES:

506

JOHN T. CAHILL, Esq., United States Attorney, for the Government: Bruno Schachner, Esq. and John C. Walsh, Esq., Assistant U. S. Attorneys, of Counsel.

PHILLIPS, MAHONEY & FIELDING, Esqrs., Attorneys for Defendant Jacob Schulman; Warren C. Fielding, Esq., of Counsel.

GEORGE MINTZER, Esq., Attorney for Defendant Irving Kandell.

HAROLD H. CORBIN, Esq., and EDWARD J. BENNETT, Esq., Attorneys for Morton and Theodore Goldman.

507

(A jury was impaneled and duly sworn.)

The Court: Ladies and gentlemen of this Jury: I am not going to take any testimony before you this afternoon. I am going to permit you to separate upon your promise that you won't talk about this case to anyone and not permit anyone to talk with you about it, nor discuss it in your hearing or presence. If anyone should undertake to talk to you about it you will report him back to the Court.

Will you promise to do that?

Jurors: Yes.

508 The Court: Very well. You may retire until 10:30 tomorrow morning.

(Adjourned to July 16, 1940, at 10:30 A. M.)

JOHN MCDONNELL, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. McDonnell, you are a deputy county clerk of the County of New York. Is that your correct title? A. No, messenger.

Mr. Corbin: Will counsel put in the assignment,
509 and there won't be any question about it, if that is the purpose of it.

The Court: If that is the purpose of this witness, that will eliminate that much of it.

Mr. Schachner: That is one of the purposes of this witness.

Mr. Corbin: Well, maybe I had better not interrupt.

The Court: Very well. You may proceed.

Q. Have you brought with you the general assignment in the case of Paul Hymowitz? A. I have. Your adversary
510 has it there.

Q. Can you find it in this file (handing witness)? A. This is the general assignment, the original.

Mr. Schachner: Will you mark this, please.

(Deemed marked Government's Exhibit No. 1)

Q. This comes out of the official files of the County of New York? A. That is right.

Q. Now you have also brought with you a file in this case, have you not? A. I have.

Q. That is the entire file of the case? A. That is the entire file of the case.

Q. And every document in this file is part of the official record, is it not? A. It is. 511

Mr. Schachner: Your Honor, I offer the entire file in evidence.

Mr. Corbin: No objection.

(Deemed marked Government's Exhibit No. 2.)

Mr. Schachner: I would like to have the specific documents identified as they come up.

Q. Specifically I ask you to identify this paper marked on the back "Petition and order for provisional bond and sale" (handing witness). A. Yes, that is one of them. 512

Q. That is part of the file? A. That is right.

Q. The paper marked on the back "Notice of retainer" (handing witness). A. That is also part of the file.

Q. These papers clipped together here, the first paper being addressed to "Goldman, Malter & Goldman, Esqrs., April 26," the date, signed "Robert Hoffman" (handing witness). A. That is also part of the file.

Q. And all these papers here (indicating). A. Are all a part of that file.

Q. The mimeographed papers (indicating). A. They are also a part of it.

Q. The papers marked on the back "Order and Affidavit to pass assignee's account" (handing witness). A. That is also a part of the file. 513

Q. This paper marked in front "Sir: Please take notice that we appear in the proceedings as co-attorneys for the assignee, pursuant to the annexed retainer duly executed and acknowledged, dated May 5th," and signed by Goldman, Malter & Goldman and Robert Hoffman (handing witness). A. That is also part of the file.

Mr. Schachner: Thank you. That is all.

Mr. Corbin: You are offering the entire file, are you?

514 Mr. Schachner: Yes.

Mr. Corbin: With the permission of your Honor, would it be all right to leave them right here?

The Court: Yes. I think the exhibits should be left with the clerk. You can reach an agreement as to some other method, but what is the custom generally? My custom is to leave them with the clerk.

Mr. Corbin: Yes. The witness can do that, can he?

The Witness: If I can get a receipt from the clerk for both.

515 The Clerk: Yes, I will give it to you.

The Court: Are there any questions of this witness?

Mr. Corbin: No. It would be better if we could have the envelope marked as an exhibit. Is that what you asked for?

Mr. Schachner: I asked to have it marked but I understand, sir, that since it was—

Mr. Corbin: Well, to cut it short, if we have the envelope marked, all the papers in it would be considered part of the file.

The Court: Yes.

516 Mr. Corbin: To have it all as one exhibit.

The Court: Yes, or you can do this: The clerk can mark on a separate sheet of paper there and attach it with a clip to the file.

Mr. Corbin: Yes, that will be fine.

The Court: Mr. Clerk, you may do that then. Just attach it with a clip, whatever number it is.

The Clerk: Yes, sir.

The Court: Is that all of this witness?

Mr. Schachner: Yes.

The Court: You may go.

(Witness excused.)

Mr. Schachner: I would like at this point to 517
offer the bankruptcy file in evidence.

Does counsel for the defense insist that it be identified by the clerk?

Mr. Corbin: I do not insist on anything at all. You mean the file of Paul Hymowitz, bankrupt? Put it in as you did before, marking the envelope as one exhibit, and all that it contains included in it. That is agreeable to me.

Mr. Schachner: Mark this, please.

(Marked Government's Exhibit No. 3.)

Mr. Schachner: I want to call to the Court's at- 518
tention that this bankruptcy file contains among other papers, a petition marked "In the matter of Paul Hymowitz," praying, after certain formal demands, that Paul Hymowitz, the alleged bankrupt, be adjudicated as a bankrupt indeed.

I have here a stipulation entered into between the attorneys representing the defendants and the United States Attorney, which I would like to offer in evidence now if there is no objection.

Mr. Fielding: No objection.

The Court: It will be marked.

519

(Marked Government's Exhibit No. 4.)

Mr. Schachner: With your Honor's permission, I would like to read that stipulation to the jury.

The Court: Very well.

(Mr. Schachner read Exhibit 4 to the jury.)

Mr. Schachner: I further want to call to the jury's attention—and I can pass this exhibit on to you at this time—the fact that Mr. Schulman's signature, that is, the defendant Schulman's signature appears on that petition several times. He signs that petition as attorney for Abraham Schwartz

520 and Samuel Zuckerman, trading as Schwartz & Zuckerman, signed by Jacob P. Schulman, attorney in fact.

I believe his Honor will instruct you that "Attorney in fact" does not mean lawyer, but agent. It is also signed by Jacob P. Schulman as attorney in fact for Nathan Ribach and Samuel Mantis, trading as Ribach & Mantis.

"Jacob P. Schulman swears that he is duly authorized to execute this petition as attorney in fact for Schwartz & Zuckerman."

"Jacob P. Schulman being duly sworn, says that
521 he is the attorney in fact for Ribach & Mantis, one of the petitioning creditors named and described in the foregoing petition, does make solemn oath that the statements contained in the foregoing pages are true, that he is duly authorized to execute these papers as attorney in fact for Ribach & Mantis, signed Jacob P. Schulman. Subscribed and sworn to before one, Samuel Jarrett, notary public of New York County."

I am taking out of Government's Exhibit 3 a paper marked for "The Honorable Alfred C. Coxe, District Judge. In the matter of Paul Hymowitz, al-
522 leged bankrupt." It is evidently an order of the Court reading as follows:

"Upon reading and filing the annexed petition of Ribach & Mantis, by Jacob P. Schulman, is duly authorized attorney in fact, verified the 3rd day of April, 1937, and upon all the papers and proceedings heretofore had herein, it is, on motion of Jacob P. Schulman, attorney for the petitioning creditors, ordered that Samuel S. Kolman, assignee, and his attorney, Robert Hoffman, Esq., and Gabriel Wishbaw, the auctioneer, be and they hereby are jointly

and severally enjoined and restrained from proceed- 523
ing with the sale of the assets under the assignment proceeding for the benefit of creditors filed in the office of the Clerk of New York County," and so on and so forth.

There is annexed to this paper a petition "To the honorable judges of the United States District Court for the Southern District of New York," which ends in a prayer, "wherefore petitioner prays that the annexed order be signed"—that is the order which I just read—"for which no previous application has been made, dated New York, April 3, signed Ribach & Mantis by Jacob P. Schulman, attorney 524
in fact."

I would just like to refer to one more order: An order of the Honorable John W. Clancy, also found in Government's Exhibit 3, which orders:

"The involuntary petition to have Paul Hymowitz adjudicated a bankrupt and proceedings thereon be and the same hereby are dismissed."

Your Honor, may I suggest that the next witness of the Government will be a witness who most likely will have to testify a long time so if a recess is about due, this would make a very convenient time 525
to have it.

The Court: Very well. Ladies and gentlemen of the jury, under the instructions I have heretofore given you, which apply throughout the trial of this case, I am going to permit you to separate. You will be permitted to separate for the luncheon and at night upon your specific promise that you will not permit anyone to talk to you about this case nor discuss it in your presence or in your hearing.

Do each of you promise to do that?

Jurors: Yes.

526 The Court: Very well. You may be excused until tomorrow morning at 10:30.

(Adjourned to July 17, 1940, at 10:30 A. M.)

UNITED STATES OF AMERICA

vs.

MORTON GOLDMAN, et al.

New York, July 17, 1940;
10:30 A. M.

527 TRIAL RESUMED.

ROBERT HOFFMAN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Schachner:

Q. What is your occupation, Mr. Hoffman? A. Lawyer.

Q. And what is your office address? A. 1270 Broadway, Manhattan.

Q. Do you remember a general assignment, for the benefit of creditors of Paul Hymowitz? A. I do.

Q. Will you please tell the Court and jury how you came to be connected with this case? A. Several days
528 before the assignment was executed I was consulted by some relatives of Paul Hymowitz, and particularly his mother, his sister and his brother. They came over to my home and they said that Paul Hymowitz had just been sentenced to Rikers Island for some trouble that he had with the City. They said that the mother had made an attempt to continue this business. It was what they call an Army & Navy store, drygoods, and they said that she was unable to continue with this business and they were interested in seeing that this business was liquidated and all the assets distributed among the creditors.

They also said that Hymowitz's mother was a creditor 529
to the extent of about $1200, that his sister was a creditor to the extent of about $700, and that in the course of the liquidation and payment of assets to the creditors they would be willing to waive their claims against the estate.

Q. Mr. Hoffman, do you know why you were retained? Did you have any prior relationship to Hymowitz or the Hymowitz family?

Mr. Mintzer: I object to that "why."

The Court: Objection sustained.

Q. Did you have any prior relations with those people, 530
Mr. Paul Hymowitz or his relatives? A. Well, Paul Hymowitz is a nephew of a brother-in-law of mine. I represented his uncle on several occasions. I also represented my brother-in-law, of course, and on several occasions prior to that I also represented his brother, Sam Hymowitz.

Q. Did you know why Mr. Hymowitz was sentenced to Rikers Island?

Mr. Mintzer: I object to that.

Mr. Schachner: I will withdraw the question.

Q. What did you do after you had been consulted by 531
the relatives? A. I think I got a pass to go to Rikers Island, and prepared an assignment for the benefit of creditors and had Mr. Hymowitz, Paul Hymowitz, execute the assignment.

Mr. Schachner: Let the record show that I withdrew a paper labeled "assignment" from Government's Exhibit 1.

Q. Is this the assignment which Mr. Hymowitz executed? A. It is.

Q. This assignment is made out to one, Kolman. Do you know Mr. Kolman? A. I do.

532 Q. Who is he? A. He is employed by me and associated with me in the practice of law.

Q. Who acted as Mr. Kolman's counsel? A. I did.

Q. Were you retained by him? A. I was.

Mr. Schachner: I withdraw from Government's Exhibit 1 the paper labeled "Notice of retainer."

Q. Will you tell us whether this is the retainer (handing witness). A. It is.

(Mr. Schachner read "Notice of retainer," part of Exhibit 1, to the jury.)

533 Mr. Corbin: Who is it acknowledged by? Your Honor, counsel is going to read the assignment in addition to what he has read as an acknowledgment before.

The Court: Proceed.

Q. After you were retained what did you do first, in connection with this assignment? A. I communicated with Mr. Wishbaw, who is an auctioneer.

Q. And what did you say to Wishbaw? A. Why, I asked him to go down and look over the stock that was in the store premises at the Bowery.

534 Q. And did he go down and do that? A. He did.

Q. And did he report back to you? A. I think I went down with him the first time.

Q. Did you make arrangements to have the stock of Mr. Hymowitz auctioned off? A. I did.

Q. How did you make those arrangements? A. Why, there was an order permitting the sale of the assets at public auction.

Mr. Schachner: I withdraw from Government's Exhibit 1 a paper labeled "Petition and order for provisional bond and sale."

I ask the witness whether this is the order which 535
he applied for and obtained.

The Witness: This is the order of sale.

(Mr. Schachner reads to the jury paper labeled "Petition and order for provisional bond and sale," part of Exhibit 1.)

Mr. Schachner: The petition states, among other things—(reading to jury).

Mr. Corbin: Is that all that you are going to read?

Mr. Schachner: At this time, Mr. Corbin.

Mr. Corbin: May I read the balance while the jury have the part of it that he read, your Honor? 536

The Court: Yes.

Mr. Corbin: Ladies and gentlemen, let me read to you what Mr. Schachner didn't. After reciting in the first paragraph that he is the assignee and that he resides in Brooklyn, and that the assignment dated March 22, which was two days before this paper was verified, had been executed, assigning all of the assets and property of Paul Hymowitz, 346 Bowery, and so forth, that it was filed on the 24th day of March, which was the same day that this was signed—

Mr. Schachner: Your Honor,—Mr. Corbin, will 537
you excuse me—may I object to this procedure. Mr. Corbin stated that he wants to read the balance. If he wants to read the balance please let him do so, but this is not the time to address an argument to the jury as to what part is relevant and what part is not relevant.

The Court: Well, as I understood it, he was calling attention to dates as shown on that paper—

Is that correct, Mr. Corbin?

Mr. Corbin: Yes.

538 The Court: If anything is shown on that paper that you desire to call attention to, as to a date or anything, without reading in detail, why, I will permit you to do that.

Mr. Corbin: Well, the thing that I wanted to read was the statement in the petition about the value of the assets.

The Court: Very well. You may do that. You may read any part that you desire.

Mr. Corbin: But I was only saying preliminarily that the first part of the affidavit covered these dates. That is all. I wasn't arguing.

539 The Court: Very well. You may proceed.

Mr. Corbin: I will argue differently from that, Judge, if we get that far.

(To the jury) After these paragraphs, and the paragraph that Mr. Schachner read, there is this: "That your petitioner has caused to be made an examination of the entire assets and has been informed and verily believes upon investigation of the same that the entire assets, consisting of Army and Navy goods, fixtures and so forth, are a value of about $1500, and annexed hereto and made a part thereof is a list of the assets now in the possession of your

540 petitioner as assignee."

Thank you.

By Mr. Schachner:

Q. Did you receive any telephone calls in connection with this assignment on or about the date you obtained this order, which is March 24, 1937? A. I did.

Q. Well, who called you? A. Someone who described himself as Morton Goldman of the firm of Goldman, Malter & Goldman.

Q. Did you recognize his voice? A. Not at that time.

Q. Did you have subsequent conversations with him? 541
A. I did.

Q. And by comparing the voice that spoke to you over the telephone to subsequent conversations, can you now tell us whether it was indeed the defendant Morton M. Goldman? A. I would say it was.

Q. And what did Mr. Morton Goldman tell you? A. He said that he understood an assignment for the benefit of creditors had been filed in the Hymowitz matter; that he represented creditors. He wanted to know what the picture was. I told him what the picture was.

Mr. Corbin: I object to that. 542

The Court: I will overrule the objection.

Mr. Corbin: I suggest that we ought to know what he told him. That is a characterization, "what the picture was." I haven't any objection to the conversation.

The Court: Yes, I sustain the objection. I thought he was repeating the conversation.

Mr. Corbin: No. He said, "I told him what the picture was." I want to know what he said.

The Court: Yes. I sustain the objection to that. That is a conclusion, as to what the picture was. I will permit him to state what the conversation was 543
he had with the defendant Goldman.

Q. Will you please state in brief detail what it was that you said to the defendant Goldman. A. He asked me what the assets were and what the liabilities were. I told him what they were and I referred—

Mr. Corbin: I object to that and move to strike it out.

The Court: I will overrule the objection.

Q. Well, can you tell us—

544 Mr. Schachner: I will comply with your request, Mr. Corbin. I will ask the witness.

Mr. Corbin: Let the witness state it.

Mr. Schachner: Well, I am going to ask the witness about that.

The Court: Very well, gentlemen. Proceed. I have overruled the objection.

Q. Will you tell us what you told Mr. Goldman and what he said to you? A. I told him that I had prepared and sent out a letter to all creditors, and I related to him the contents of that letter, and that letter included the
545 assets and liabilities as I thought they were at that time. I also told him that an order of sale had been obtained and that notices were going out to creditors. I also told him that if he were interested in this estate, why, I would be glad to work with him and I expected his cooperation. He then suggested that a meeting be called at the Dry Goods Association over at 175 Fifth Avenue. He said that the matter could be discussed there among the creditors and asked whether I would send out a notice to all creditors calling a meeting for the following afternoon at the office of the Dry Goods Association. I told him I would.

546 Mr. Schachner: Will you mark these, please.

(Marked Government's Exhibits 5, 5-A, 5-B and 5-C for identification.)

Q. Mr. Hoffman, I show you Government's Exhibit 5-A and ask you whether this is the notice which you prepared in compliance with the defendant Morton M. Goldman's demands (handing witness). A. It is.

Mr. Schachner: I would like to offer Government's Exhibit 5-A in evidence and to read it to the jury at this time.

Mr. Fielding: No objection. 547

Mr. Schachner: May I correct the record? I referred up to now to Exhibit 5-A. I now notice that it is Exhibit 5.

The Court: Very well.

(Government's Exhibit 5 for identification received in evidence.)

(Mr. Schachner read Exhibit 5 to the jury.)

Q. Mr. Hoffman, I ask you to look at Government's Exhibit 5-A and to tell the Court and jury whether this is the letter which you sent along (handing witness). A. This is 548 the letter.

Mr. Schachner: I would like to offer Government's Exhibit 5-A into evidence at this time.

Mr. Fielding: No objection.

(Government's Exhibit 5-A for identification received in evidence.)

Mr. Schachner: I would like to read it to the jury.

(Mr. Schachner read Exhibit 5-A to the jury.)

549

Q. Mr. Hoffman, I show you Government's Exhibit 5-C and ask you whether this is a notice which you prepared to be enclosed in this letter that contained all the other matters (handing witness). A. This was a notice sent out to the creditors advising them or informing them that there would be a public auction or a sale of the assets.

Mr. Schachner: If Mr. Corbin will permit me, if I just tell the jury—

Mr. Corbin: You don't need my permission. Go ahead.

Mr. Schachner: Well, I offer it in evidence, but

550 I do not think it is necessary to read it unless you require it (handing to Mr. Corbin).

Mr. Corbin: He said that went out with the March 24th letter?

Mr. Schachner: Yes.

Mr. Corbin: I don't care whether you read it.

(Government's Exhibit 5-C for identification received in evidence.)

Mr. Schachner: (To the jury.) This is a notice that an auction will take place on the 5th day of April, 1937, at 10:30 A. M. at No 346 Bowery.

551 Q. Did anybody else call you up that day in compliance with the defendant Morton Goldman's request that you send out an invitation to a meeting to be held the next day? A. You mean on the 24th of March?

Q. Yes. A. Someone called up and said he was Jacob Schulman, an attorney.

Q. Did you recognize his voice? A. At that time, no.

Q. Did you talk to him subsequently? A. I did.

Q. Can you tell us now whether or not that voice was the voice of Jacob P. Schulman? A. I would say it was.

Q. And what did he ask for? A. He asked for information
552 about the assignment, asking what the assets and liabilities were, and I gave him that information. I also told him that a meeting had been called at the office of the Dry Goods Association, at the request of Mr. Goldman, Morton Goldman. I told him that notices had been sent out calling that meeting. I also told him a letter had been sent out informing creditors of the general situation.

Mr. Corbin: May I move to strike it out, that entire answer. He said, "I gave him that information," and ask in that connection that he recount what he said to him.

The Court: As I understood the witness, that was the conversation. I understood him to say that he told him he sent out a letter giving the general information. 553

Is that a conversation you had with Mr. Schulman?

The Witness: Yes, sir, and gave him the substance of the letter.

The Court: Yes. I overrule the objection.

Mr. Corbin: He said he also did that. All right.

The Court: I sustain that part, as to "I told him the substance of the letter."

I will let you say what you told him, as you actually remember, the best recollection of what you actually told him, but the statement that he gave the substance of the letter, I will grant the motion to exclude that part of it. 554

The Witness: May I have the letter, Mr. Schachner, please?

Q. Is the information which you gave—

Mr. Corbin: No. He has asked for the letter. Let him see the letter.

The Court: Let him see the letter. 555

(Letter handed to the witness by Mr. Schachner.)

The Court: Very well. You may proceed now.

A. (After examination) I told Mr. Schulman—may I continue?

Q. You may. A. I told Mr. Schulman that there had been some—that the estimate of the cost value of the merchandise was approximately 22 to $2500, that there was on hand some emergency Relief Bureau vouchers of the value of approximately $250. I told him there might be some other

556 relief vouchers that could be collected and that there were liabilities of approximately $2500.

Q. The information which you gave to the defendant Morton Goldman, the information which you gave to the defendant Jacob P. Schulman, and this letter which you sent out to all the creditors, all recite that the cost value of the store, of the merchandise and stock in the store, was of the approximate value of 2200 to $2500, that is, the cost value, and that there were also on hand certain emergency Relief Bureau vouchers of a certain additional value stated. Will you tell the Court and jury how you arrived at these figures? A. I got that information from Mr. Hymowitz
557 when I saw him off at Rikers Island.

Q. Did you have anything to do with the drawing of the petition signed by Mr. Kolman? Did you have anything to do with the drawing of that petition and order for provisional bond and sale? A. I don't think I did.

Q. You did not draw that? A. No, sir.

Q. And you do not know how the value stated in this petition was arrived at? A. No, sir.

Q. On the day scheduled, on the day on which the meeting was scheduled to take place, that is, on March 25, 1937, did you hear any more about this matter, this assignment?
558 A. On what day?

Q. On March 25. A. I did.

Q. Well, what did you hear and from whom? A. I received a telephone call from someone who said he was Theodore Goldman.

Q. Did you recognize the voice of the defendant Theodore Goldman? A. Not at that time.

Q. Have you subsequently spoken to him? A. I have.

Q. Can you tell us now that the voice was actually that of the defendant Theodore Goldman? A. I should say it was.

Q. What did Mr. Theodore Goldman ask you? A. He

said he wanted to see me before the meeting took place and he would like to come up to my office. I told him—I, rather, asked him what was the necessity for it, and he said he wanted to speak to me. 559

Q. Did you permit him to come up? A. I said, "If you want to come up you can do so."

Q. Did he come up? A. He did.

Q. Around what time? A. Around noontime.

Q. Did he come alone? A. He was accompanied by somebody whom he introduced as Mr. Kandell.

Q. Did he tell you who Mr. Kandell was or did you know who Mr. Kandell was? A. I did have an idea who Mr. Kandell was, although I never met him before that day. 560

Q. Well, have you subsequently found out who Mr. Kandell was? A. He is supposed to be the—

Mr. Mintzer: I object to that.

The Court: I sustain the objection, "what he is supposed to be."

The Witness: He is connected with that Dry Goods Association at 175 Fifth Avenue.

Q. That is the Dry Goods & Furnishings Association, a collection agency, at which the meeting was scheduled to take place? 561

Mr. Mintzer: I object to that insertion "collection agency." He asked "Was it the Dry Goods Association that the meeting was held at."

The Court: Yes. I will sustain the objection as to the part which referred to a "collection agency," because it assumes something that has not thus far been shown.

Q. He is connected with the Dry Goods & Furnishings Association, is that your answer? A. Yes, sir.

562 Q. Do you know just what his connection with that Association is? A. I think he is the head of it.

Q. These two men came to your office? A. That is correct.

Q. What did they say to you when they came there? A. Well, Mr. Goldman said he thought it would be a good idea if he were retained as attorney and Mr. Kandell as co-assignee. I asked him what the necessity was. He said things would go so much smoother, they represented some of the creditors, and that if they were not associated with the co-attorney and co-assignee there might be difficulty. I told him if the creditors had any idea they were going
563 to file a petition in bankruptcy that would not be the best thing for the creditors.

Furthermore, I told him there was no need for a co-attorney or co-assignee, the matter was a small matter, there were no legal complications, and I saw no necessity for having a co-attorney and co-assignee.

On the hand, I told them if they wanted to cooperate I would appreciate it.

I also said that if they wanted to investigate or ask any questions, or look at any books or records they were welcome to do so.

564 I think it was Mr. Goldman who said that was the usual thing where some attorneys represented creditors in an estate they should be retained. I told him that was not my understanding.

As a matter of fact, I asked him whether he knew some man, some attorney by the name of Robert P. Levis, and he said he did. I told him I would call Mr. Levis up. He is an outstanding authority on bankruptcy and I would put a call in to Mr. Levis. When I got through talking with Mr. Levis, I told him there was no necessity for having a co-attorney or co-assignee in this estate.

As a matter of fact, both of them said I ought to think

it over and they would see me before the meeting took 565
place at the Dry Goods Association, and before leaving they left with me what are known as stipulations or retainers for the co-attorney and co-assignee.

Q. Did they explain to you the advantages of retaining them as co-attorneys and co-assignees? A. They said everything would go more smoothly and less likelihood of a petition in bankruptcy being filed.

Q. Did they tell you anything if you didn't retain them as co-attorney and co-assignee? A. They said there might be a petition in bankruptcy filed.

Q. Did they tell you they could bring that about? A. I don't think they did. 566

Q. Did they mention or not that they were influential with creditors at that meeting? A. They did.

Q. They did? A. They did.

Mr. Schachner: I ask that these be marked for identification.

(Marked Government's Exhibits 6 and 7 for identification.)

Q. You say that the defendant Theodore Goldman and the defendant Kandell told you they represented creditors? A. Yes, sir. 567

Q. Is that right? A. Yes, sir.

Q. Did the defendant Theodore Goldman tell you whom he represented, who was the creditor whom he represented? A. I think both of them said they represented Butler Brothers.

Q. I show you Government's Exhibit 6 marked for identification and ask you whether this was left with you by the defendants Theodore Goldman and Kandell? A. These papers were left with me.

568 Mr. Schachner: I offer Government's Exhibit 6 for identification in evidence. (Shows to counsel for the defendants.)

Q. I show you Government's Exhibit 7 for identification and ask you whether this was left with you by the defendants Theodore Goldman and Kandell? A. This was left with me at that time.

(Mr. Schachner shows Government's Exhibit 7 for identification to counsel.)

569 (Government's Exhibits 6 and 7 for identification received in evidence, without objection, and read to the jury.)

Q. Do you see Theodore Goldman in the courtroom here? A. I do.

Q. Can you point him out to the Court and jury? A. He is sitting right there (Pointing).

Mr. Schachner: Will the Clerk please ask the defendant Theodore Goldman to stand up.

(A person arose.)

570 Mr. Schachner: Let the record show that the witness identified the defendant Theodore Goldman.

Q. Do you see Mr. Kandell in the courtroom? A. There is the gentleman (pointing).

Mr. Corbin: We waive any questions about identification.

Mr. Schachner: Let the record show that the witness identified the defendant Kandell.

Q. Did the meeting at the Dry Goods & Furnishings Association scheduled for March 25, 1937, take place on that day? A. It did.

Q. Did you attend that meeting? A. I did. 571

Q. Who was present besides you? A. Mr. Wishbow, the auctioneer accompanying me, and there were a Mr. Goldstein of some other association, Mr. Kandell, Mr. Cohen, Mr. Philip Cohen, and there were three other men there. I think one was a representative of the firm of Ribach & Mantis, another representative of the firm of Schwartz & Zuckerman, and the other a representative of A. Kreiselman & Sons, and Morton Goldman was there.

Q. Will you please tell the Court and jury what was said at that meeting? A. I told the meeting that it had been called at the request of Morton Goldman, that I was there in compliance with that request, that I would be 572 glad to give them a picture of just what the condition was and that they could ask any questions that they desired.

I also told them that I had brought along with me Mr. Wishbow, who was the auctioneer, because he was more familiar with the inventory and the stock assets of the assignee, he having examined it a day or two before, so they could ask him any questions with regard to the stock down there. They asked him questions about the assets and liabilities, and I gave them that information.

Q. What did you tell them? A. I practically repeated the contents of the letter that had been sent to all creditors.

Q. What did the creditors say and what did the other 573 people present say? A. I think Mr. Goldstein suggested that there ought to be a sale of the assets in bulk, explaining that all the assets were to be sold to somebody who would be willing to buy it in the assignment proceeding. I think that is the way he said it, and then the other three creditors, that is Kreiselman and somebody from Kreiselman's and Ribach & Mantis and Schwartz & Zuckerman, almost in unison, stated they had each a buyer for it and they would be interested in buying the stock themselves.

Q. What did you say to that suggestion? A. I told them

574 I didn't feel this inventory or stock ought to be sold to a private bidder. I told them the way I thought they could get the best price for those assets was to have a public auction, properly advertised, so they could get interested buyers and have them bid against each other, and then they asked some questions of the auctioneer. I think before that Mr. Goldstein asked why I brought Mr. Wishbow, and I explained it to him, that he was more familiar with the assets, and could explain to them the type of merchandise and what they might be able to realize. I think it was at that point Mr. Wishbow and I were asked to leave the room, and we did.

575 Q. Before you tell us about that will you also tell us what the defendant Morton Goldman said on that occasion? A. With respect to what?

Q. Well, whatever you can remember was said by him, if he said anything? A. Well, he participated in the general conversations that ensued.

Q. Do you see the defendant Morton M. Goldman in the courtroom? A. Yes, sir, right behind you.

Mr. Schachner: Let the record show that the witness identified the defendant Morton M. Goldman.

576 Q. Who asked you to leave the room? A. I think it was Mr. Goldman, Morton M. Goldman.

Q. Were you asked to leave the room alone? A. No, Wishbow and I were asked to leave the room.

Q. Wishbow, that is the auctioneer? A. Yes, sir.

Q. Where did you go after you left the room? A. We went to an adjoining room.

Q. And what happened in that adjoining room? A. Well, we waited there for about five, ten or fifteen minutes.

Q. And what happened after you returned? A. Morton Goldman came into that room and asked Mr. Wishbow and me to accompany him out in the hall, to step out into the hall.

Q. And what did he say to you when you had stepped 577
out into the hall, which I take it you did? A. He said that he would like to make some money out of this deal, and he also thought that Wishbow and I wanted to make some money on this deal. He said he could arrange for a private sale, that the buyer would be obtained by either him or Mr. Kandell, that he with the help of Mr. Kandell would try to make an arrangement of 40 percent of the creditors' claim. He said that would take about a thousand dollars, and he said that he could arrange with Mr. Kandell to have this buyer pay a certain amount of money for the assets in the store; that only a part of the money that they would obtain from this buyer would be disclosed to 578
creditors; that the amount they would show to creditors would be the sum of $1000, or with a couple of hundred dollars, or a small sum of money above that, to take care of some expenses, and the balance, that would be kept a secret, would be split among Kandell, himself and me, the difference between the amount which would be reported to creditors and the amount they would actually obtain from a private buyer.

Mr. Corbin: What was the amount?

The Witness: No amount was stated at that time.

Mr. Schachner: Mr. Corbin, I will give you an 579
opportunity to examine the witness later.

Mr. Corbin: I didn't hear you.

Mr. Schachner: I would appreciate it if you would wait for your opportunity to examine the witness.

The Court: All right, gentlemen, proceed. Do not make requests to each other, make your application to the Court and I will rule on it. Continue.

The Witness: Do you want me to continue?

Q. You said there was going to be a certain sum received

580 from the buyer which was going to be kept secret from the creditors? A. That is correct.

Q. Was the amount mentioned? A. Not at that time.

Q. As the defendant Morton M. Goldman explained to you how the creditors could be made to consent to such an arrangement? A. Which creditors?

Q. All of the creditors that were entitled to share in the distribution?

Mr. Corbin: I object to that as suggestive and leading.

The Court: I sustain the objection.

581 Q. What else was said that you remember? A. I told Mr. Goldman at that time that I didn't like to make money that way. He said that if we didn't work it that way, why, in all likelihood we would have trouble with creditors and a petition in bankruptcy might be filed.

Q. Do you remember anything else that was said on that occasion? A. I think I said to him at that time, or rather I asked him what he was going to do with three creditors who were in the room at that time; they knew what the facts were, because they heard me explain what the facts were, that they knew what the inventory might
582 be worth, and I also told him a letter had gone out to all the creditors explaining to them what the assets were.

Well, he said, Kandell could handle the other creditors. He said he would send out some sort of a letter to them, and that with regard to the three creditors who were in the room he would throw them each a ten-dollar bill and they would shut their mouths.

Mr. Mintzer: May I ask your Honor to instruct the jury that any conversation or alleged conversation between Goldman and the witness, not in the presence of Kandell, is not binding on Kandell.

The Court: I will instruct them at this time that 583
it is not binding on any one but the defendant Goldman. Ultimately I will instruct them on my final charge, but at this time the conversations are admissible only against the defendants with whom had, or in whose presence the conversations were had.

Mr. Walsh: That would include Mr. Shulman.

Q. Do you know what the relationship is between Theodore Goldman and Morton M. Goldman? A. I understand they are brothers.

Q. Do you know in what firm they practiced law? A. 584
Under the name of Goldman, Maher & Goldman.

Q. And that is a partnership consisting among others of those two? A. I assume that to be the case.

Q. Did the defendant Morton Goldman explain on that occasion what would happen if his proposition was not accepted?

Mr. Corbin: I object to that as suggestive and leading.

The Court: Objection sustained.

Q. Do you remember anything else that was said at that 585
time? A. Not at this time. There may be some papers, Mr. Schachner, that might refresh my recollection. Presently I have no other recollection.

Mr. Schachner: Your Honor, may I repeat my previous question for the purpose of refreshing the witness's recollection?

The Court: That would be leading, Mr. Schachner. There is an objection made on that ground. Of course, this witness is a lawyer, and I see no necessity relaxing the rule against leading questions. He can

586 state his best recollection on any conversations that he had and, of course, if he overlooks anything, at a later time I might permit you to make a suggestion or call his attention or direct his attention to some particular conversation about which you think he might have some information, but I think leading questions ought not to be propounded to this witness.

Q. What did you tell Goldman in answer to whatever he had said to you? A. I told him I would think it over.

Q. Is that all you said to him? A. I think so.

Q. Did you return to the meeting? A. We did.

587 Q. And what happened after you returned to the meeting? A. Why, Goldman made a statement to the meeting that he thought he could get along with Wishbow and me.

Q. Did the meeting adjourn at that time? A. Well, there were some statements made by Kandell. Kandell asked that I give him a list of the creditors. He said all that was asked of you.

Some of the other creditors who were there said they would be interested in sending down some buyers, or they themselves would look the stock over. I told them that arrangements would be made for anybody who wished to go down and look the stock over, that they could do so.

588 Q. To your knowledge was that done subsequently? A. What?

Q. Were such arrangements made to your knowledge? A. Yes, sir.

Q. They were? A. Yes, sir.

Q. Did you ever hear about a petition in bankruptcy being filed against Paul Hymowitz? A. I did.

Q. Tell us when you first heard about that? A. Saturday morning, that is, the Saturday before the Monday of the sale.

Q. Who called that to your attention? A. Mr. Kolman.

Q. What did you do after you heard about that? A. 589
Why, I communicated with a Mr. Niehaus, who is the credit manager for Butler Bros.

Q. What did you say to him? A. I asked Mr.—

Mr. Mintzer: I object to the conversation.

The Court: Yes, I sustain the objection.

Q. What else did you do that day? A. I called up Mr. Wishbaw and asked him to come over to my office, and when he got there, with his help I dictated certain affidavits.

Q. For what purpose were those affidavits going to be 590
used? A. Making some application with respect to the petition which had been filed.

Q. What happened on the day of the sale? Before we go into that question, if I may withdraw that question, did you make any efforts to get in touch with any of the defendants on the Saturday preceding the day of sale? A. Mr. Wishbaw communicated with Morton Goldman.

Q. In your hearing? A. Well, he made the phone call out of my office while he was there.

Q. Could you hear what he said? A. I could hear what Mr. Wishbaw said.

Q. What did Mr. Wishbaw say—to whom did he make 591
that telephone call? A. Morton Goldman.

Q. What did he say to him? A. He told Mr. Goldman that he had better not or, rather, that Mr. Goldman should get in touch with Mr. Schulman and make every effort to hold Mr. Schulman from trying to stop that sale, and that "we were preparing affidavits in the office, to call all the facts to the attention of the Court, and that if that wasn't done, that is, to have Mr. Schulman refrain from making applications for a stay of that sale, the thing would be blown wide open."

Q. Did Mr. Wishbaw refer to the events outside the office

592 of the Dry Goods & Furnishings Association in that conversation?

Mr. Corbin: I object to it.

The Court: What was the question, Mr. Reporter?

Q. (Read.) A. He did.

The Court: I will overrule the objection insofar as the defendant Morton Goldman is concerned, but as to the other defendants it has no probative force at this time. As to the weight that might ultimately be given, why, of course I will instruct the jury at
593 the conclusion of the case.

Q. And what did he say about those events? A. He reminded Goldman that Goldman had made certain statements in the hall, that is, outside the Dry Goods Association, with regard to making a proposition to Wishbaw and myself.

Q. Well, what happened on Monday? That was the day or was to be the day of the sale, that is, Monday, April 5th, 1937. A. The sale had been advertised and Wishbaw, Kolman and some of Wishbaw's men, employees, and I had gone to the—we all went down to 346 Bowery. That is
594 the place where the merchandise was. There were about 20 or 30 people around there who I understood—they were interested: they were looking over the merchandise and before the sale could be started we were served, that is, Mr. Wishbaw and I were served with orders of the Federal Court staying the sale, that is, restraining us from going ahead with the sale.

Q. What happened after that? A. Why, Mr. Wishbaw and I went down to the Federal Court and I think before we went down to the Federal Court we went over to some office on lower Broadway and I prepared a notice of motion returnable the same afternoon before Judge Coxe, and the

application was to vacate the order which stayed the sale: 595

Q. What happened then? A. A copy of that order was served upon Mr. Schulman who appeared as the attorney for the petitioning creditors, and at 12 o'clock noon of that day, that is, Monday—do you want me to continue, Mr. Schachner?

Q. Please do. A. That noon we appeared in the chambers of Judge Coxe of this court, and there was an argument on that application.

Q. I show you Government's Exhibit 3 in evidence and I ask you whether that is the order dated April 3 staying the sale (handing witness). A. That looks like it.

596

Mr. Schachner: I should like to read to the jury the petition filed by the defendant Jacob P. Schulman obtaining that order.

(Mr. Schachner read petition to the jury.)

Q. You were telling the jury about the events on Monday morning, that is, April 5, 1937. Will you please continue telling us what happened that morning? A. I say, at noon, after the notice of motion was served on Mr. Schulman's office, we appeared in the chambers of Judge Coxe at 12 o'clock that day—that is, noon—and argument was had upon the application. There was a discussion there of all 597 the facts and of all the events that had taken place prior to that day.

Q. Well, what did the judge do? A. You mean finally?

Q. Well, tell us what he did before he did something finally and tell us what he did finally. A. Well, I explained to—rather, I stated to Judge Coxe all the facts in that case, and then Mr. Schulman made a statement that he was not interested in Mr. Morton Goldman, that he represented the petitioning creditors, and if there were any argument between Mr. Goldman and myself, he was not interested in it. Then Judge Coxe asked one of the creditors

598 itors—I think the same three persons who were at the meeting of the Dry Goods Association on March 25 also appeared at the chambers of Judge Coxe on that Monday, April 5th, and Judge Coxe addressed himself to one of the creditors, and this was after Mr. Schulman had argued the application, and Judge Coxe asked one of the creditors what he liked and the creditor said, "Well, I want administration in the Bankruptcy Court, and I would like a receiver and I would like this, that and the other thing," and then Judge Coxe addressed himself to one of the other creditors, and he says—he said—he asked the other creditor what he would have, and this other creditor said, "I
599 will have the same," and then Judge Coxe addressed the third creditor and he asked him, and he said, "I would like the same thing too," so —

Q. What was Judge Coxe's decision? A. He said he had to abide by the wishes of the creditors—well, rather, not abide, but he said, "I heard what the feelings of the creditors were in the matter," although I explained to Judge Coxe that the three of them I don't think totaled $250, less than 10 per cent of all of the claims.

Q. Tell us what the Court finally decided, please. A. Judge Coxe said that Schulman and I should try to get together and straighten this thing out.

600 Q. Well, this was an application to permit the sale, was it not? A. This was an application to vacate the stay and thus permit the sale to go on, and he denied the application to vacate the stay.

Q. Thank you. Did you thereupon leave Judge Coxe's chambers? A. We did.

Q. What happened as you left Judge Coxe's chambers? A. I was asked whether I wanted to do business with Schulman.

Q. Who asked you? A. I think Wishbaw.

Q. And what did you reply? A. I said, "Yes."

Q. Well, what happened thereupon? A. We went over 601
to Schulman's office.

Q. Who is "we"? A. Mr. Wishbaw, Mr. Kolman, I think Mr. Dunn was there. I don't know whether the three creditors who were there—I don't remember them accompanying Mr. Schulman or, rather, accompanying us to Mr. Schulman's office. As far as I recollect, there was Mr. Wishbaw, Mr. Kolman, Mr. Dunn, Mr. Schulman and myself, went over to Schulman's office and Schulman asked everybody to stay outside except me and he and I walked into his private office.

Q. After you walked into his private office—

602

Mr. Mintzer: Your Honor, likewise on all these conversations will you instruct the jury that they are not at the present time binding on Mr. Kandell?

The Court: Yes, I will instruct the jury that the conversations had outside the presence of Mr. Kandell are not binding upon him at this time, but they are binding upon those who are present and heard it.

Q. Well, tell us about the conversation that took place inside of Schulman's private office. A. Well, Mr. Schulman said that I was green and foolish for making those statements before Judge Coxe, and I said, "That is the way I felt about it." And he said, "It is foolish to argue about those things," and he asked whether he could do business with me along the lines as outlined by Mr. Goldman, that is, Morton Goldman, that is, to obtain a private buyer and then split the difference between the amount revealed the creditors and the amount actually obtained from the buyer; and he also said at that time that any amounts that would be split would be divided three ways: He would get a share, Goldman—Morton Goldman would get a share and I would get a share. That I would take care of Kolman

603

604 and Wishbaw; he would take care of his three creditors and Goldman would take care of Kandell.

Q. Was the petition in bankruptcy mentioned? A. Yes, sir.

Q. Well, what was said about that? A. Well, he said that—Schulman said that the petition in bankruptcy had been prepared in such a way that it could be easily dismissed. He said that no definite, specific act of bankruptcy had been stated in the petition. He also said at that time, I think, that it was so prepared that even if application were made by anybody to dismiss the petition, why, the petition could be amended and made to stick. On the
605 other hand, if we worked in on this deal, why, the petition could be dismissed.

Q. What did you tell Mr. Schulman, that is, the defendant Schulman? A. What did I say to him?

Q. Yes, what did you say to him at the end of the conversation? A. I told him that I was agreeable to that, and he asked whether he could communicate—whether—no, that he would get in touch with Mr. Kandell and with Morton Goldman and arrange for an appointment for the following day or the day after that.

Q. Did he get in touch with the defendant Kandell in your presence? A. I don't know; I don't remember

606 Q. What did you do on that day after you left Schulman? A. I went over to the office of Referee Kurtz?

Q. Who is Referee Kurtz? A. He is a referee in bankruptcy in this court. And when I spoke to him I told him what the situation was—

Mr. Corbin: Now one moment.

Mr. Fielding: I object to what he said to the referee.

The Court: I sustain the objection.

Q. After you spoke to Referee Kurtz, what did you do then? A. Why, he asked me whether I would tell my story to the Federal Bureau of Investigation. 607

Mr. Fielding: I move to strike out the answer.
The Court: Yes, I sustain the motion.
You may state what you did after that.
The Witness: Pardon?
The Court: But not the conversation.
The Witness: Oh!

Q. Where did you go after you left Referee Kurtz then? A. Well, I waited in his office until a representative of the Federal Bureau of Investigation came down. 608

Q. What did that representative from the Federal Bureau of Investigation tell you?

Mr. Fielding: I object to it on the ground that—
The Court: I sustain the objection.

Q. Did you have a conversation with a representative of the Federal Bureau of Investigation? A. When?

Q. On that day. A. I did.

Q. Did you have any other conversations with a representative or representatives of the Federal Bureau of Investigation? A. So many I can't recall how many. 609

Q. What did you do after you had a conversation with a representative of the Federal Bureau of Investigation on that afternoon when you had seen Referee Kurtz? A. I communicated with Schulman and arranged for an appointment for the following day or the day after that, for late in the afternoon.

Q. Well, do you remember the time at which that meeting took place? A. The time of the day?

Q. Yes. A. Late in the afternoon, about five; I imagine about five or six o'clock. My records would indicate that, Mr. Schachner.

610 Mr. Fielding: I move to strike that out as not responsive.

The Court: Yes, I sustain the motion. Strike out the last part of the record as indicated.

Q. You had that meeting with Schulman. What did he say to you at that meeting? A. You mean the one following the—

Q. The one regarding which you have just told us, where you made an appointment after you had seen a representative of the Federal Bureau of Investigation and that was scheduled to take place at about five or six, as you testified.

611 Can you tell us what the defendant Schulman told you at that occasion? A. Well, when I got there—well, we just had some conversation. He said that he had called—he expected Kandell and Morton Goldman over to his office. Then we spoke some more and then he said he had gotten a call that Mr. Goldman was on his way but that Mr. Kandell was engaged elsewhere and might not be able to get over there.

Q. Did Goldman come to that meeting? A. Who?

Q. Did Goldman, that is, the defendant Morton or Theodore Goldman? A. Morton.

612 Q. That is, did the defendant Morton Goldman come to that meeting? A. He did.

Q. Will you please relate to us as well as you remember what transpired at that meeting when the three of you, that is, the defendant Schulman, the defendant Goldman and you were there together? A. Well, substantially, when Goldman got there he upbraided me for making those statements to Judge Coxe or before Judge Coxe, told me I was all wet and he said that he never made any proposition to me. I, of course, told him that he did and I told him whatever I stated to Judge Coxe was the truth, and that argument kept on for a short while and Mr. Schulman

intervened and acted as a peacemaker. He said that we should stop arguing, and that I was green about the thing and didn't know any better. I mean there was a general discussion that followed. Morton Goldman stated that he came into the picture to represent the creditors, and that he was going to look out for the best interests of all creditors, and then there were some other discussions about assignments and sales and the like. I don't recollect just what they were. 613

Q. Did the defendant Morton M. Goldman stay until the end of the meeting? A. He did not. He said he was going to leave, and before he left Mr. Schulman asked him to wait outside. Mr. Schulman left the office, Goldman left the office, and some few minutes later Schulman came back. 614

Q. And what did the defendant Schulman tell you after he came back? A. He told me that he spoke to Mr. Goldman, Morton Goldman, and had told him what Mr. Schulman had discussed with me, the time that I was last at his office, and he told me that Morton Goldman was afraid to speak before me, but that he was amenable to going through and that he would carry out whatever was agreed upon or arranged.

Q. Well, did Schulman say anything else to you at that meeting? A. He asked whether it would be all right for him to call up a buyer. I said he could if he wanted to, and he called somebody on the telephone and addressed him as Mr. A. 615

Q. He did not state his full name, is that your testimony? A. Not at that time. I don't think so, and then Mr. Schulman asked whether he could—whether it could be arranged to see the merchandise or examine the stock down at the Bowery store, that is, the following day, for the following day.

Q. To your knowledge were such arrangements made? A. Arrangements were made for Schulman or Schulman and

616 his representatives or buyers to be down at the store the following day.

Q. Did Schulman report to you what the outcome of that inspection was? A. I think at that time he said he had an offer of 12 or $1500 from this buyer, and I told him it was an insufficient amount, that the auctioneer, that is, Wishbaw and his appraiser, Mr. Dunn, had told me that that stock was worth over $1800, and that they would have to jack up the price. Well, he said he thought he could get a definite offer of 1500 and if the point were pressed he might get another $100.

617 Q. When did he say all that to you? A. On the telephone between—oh, say, within a week following that 7th day of April, and I think he also told me some of that on the meeting that we had, I should say, within a week after the 7th of April at his office.

Q. And that was a second meeting that you had? A. I had another meeting with him about a week following the 7th of April.

Q. Where did that meeting take place? A. At his office.

Q. And what happened there? A. I think he stated that he had a definite offer of 1500 and he might be able to get 1600. I think there was something mentioned at that time about those relief vouchers, claims that Hymowitz had

618 against the City. There was some mention of that at that time. There was also a discussion of a preparation of a bill of sale and affidavits to be executed by Hymowitz with respect to creditors of the estate. There was also discussion as to waivers by Hymowitz's mother and sister with regard to their claims totaling $1900.

Q. Had you informed all the creditors that those claims were going to be waived? A. If that statement is not contained in the first letter which I sent out to all creditors, then the only time that statement was made to creditors was at the meeting at the Dry Goods Association on March 25.

Q. But you did inform the creditors that the claims which the relatives had were going to be waived? A. You mean I personally? 619

Q. Yes. Is that your testimony? Do I understand that? A. Well, I say if it is in that letter dated March 24th, I think, then I did inform all of the creditors. On the other hand, if it isn't contained in that statement, then I made a statement at the creditors' meeting on March 25th at the Dry Goods Association offices, at which time there were only about three creditors out of 31 present.

Q. And you again informed the defendant Schulman of that fact on this meeting? A. Of which fact, Mr. Schachner?

Q. Of the fact that the claims were going to be waived. 620
A. Oh yes. That is on the 14th.

Q. That meeting took place on or about the 14th? A. My records indicate about a week after the 7th.

Q. And what was said about the bill of sale at that time? A. I think he asked that I leave the amount of the consideration in the bill of sale blank.

Q. Did he tell you why it should be left blank? A. Well, he wanted to decide about how much there would be to split up. I think there was something said about it at that time, and that was one of the reasons advanced by him.

Q. Did he say on that occasion how much there was going to be split up? A. You mean at the second meeting? 621

Q. Yes. A. Well, there was some discussion. I don't recollect now whether it was three or four hundred dollars. That was to be the difference between the amount that would be undisclosed—rather, the purchase price undisclosed and the purchase price that would be disclosed to creditors, that is, in the bill of sale, but there was talk there of the voucher claims that Hymowitz had, and that together with the—I think there was a thousand dollars that Schulman said would cover the 40 per cent of the creditors' claims, and I think they amounted to about $2500, and in addition

622 I think he said that he would use the moneys that would be obtained from the City in payment of those relief vouchers, and that that sum, together with $1000 or just a little bit more than that, would be used to pay off creditors' claims to the extent of 40 per cent, and so that the creditors would see that there would only be about 50 or $75 for attorneys, and then the balance above that would be split amongst Goldman, Schulman and myself.

Q. Do I understand your testimony correctly that the money received from the City was going to be disclosed to creditors and paid to them? A. I think that was going to be used in the estate to pay out creditors, and also in con-
623 nection with some of the administration expenses.

Q. And the only money that was going to be split secretly was that additional sum that you were going to get from the buyer, is that right? A. That is correct.

Q. Did Mr. Schulman tell you the name of the purchaser to whom you should make out the bill of sale at that meeting? A. I don't think he did.

Q. Did he tell you the amount? A. He mentioned something around $1200.

Q. Did he subsequently tell you the amount? A. I think in the conversation over the telephone, after April 14th, that second meeting, he told me to state a consideration
624 of $1200.

Q. Did you meet with the defendant Schulman again? A. About a week later.

Q. Where did that meeting take place? A. At his office.

Q. And do you remember at what time that meeting took place? A. I think it was late in the afternoon.

Q. Well, now what transpired at that meeting? Who was present there at that meeting—may I withdraw my previous question. A. Mr. Schulman and I.

Q. What transpired there? A. He asked whether I had the bill of sale executed. I told him I had it executed.

that I had sent Kolman up to Rikers Island to have 625
Hymowitz sign it. I told him I also had the affidavits with respect to the creditors who were to share in any of the assets of the estate, and I think at that time I also told him that the mother and sister of Paul Hymowitz had definitely consented to waive their claims. Now I don't know whether at that time they had signed an affidavit waiving their claims but I know that there is some affidavit that was signed in which they waived their claims, and I told him that I had all these papers and asked him whether he had gotten the money from the buyer, and he said that he hadn't but that it was as good as gold or as good as a bank, or something like that, and I asked him how that 626
money was going to be handled, and he said, why, he would hold it and there was nothing to worry about. He did that quite frequently and everybody trusted him. And I told him that I wanted to make certain that Wishbaw was taken care of properly because he had had approximately 75 to $100 of expenses up until then, moneys actually disbursed and that Wishbaw was uneasy about this entire matter. And I think there was some discussion at that time with respect to Kandell and Goldman.

Q. Did Mr. Schulman tell you how much the defendant Kandell should receive? A. I think he said that he was 627
going to show a balance of $400, that is, a difference between the $1600 and the 12 shown in the bill of sale, that would be split three ways: one hundred and a quarter a piece, and Kolman would get $25 as the assignee or for the assignee's fees. I mean it was somewhere around those figures, Mr. Schachner.

Q. Did the defendant Schulman explain to you how much the defendant Kandell should receive? A. No. He said that Morton Goldman—the share that Morton Goldman would get would be used to take care of Kandell, that they usually work together, and Kandell was the one who ob-

628 tained all these claims, and that Goldman worked these things out and they usually split whatever they got and those things were almost daily occurrence.

Mr. Mintzer: Your Honor, may I at this time make the same request, that all this conversation took place not in the presence of Kandell and at the moment is not binding?

The Court: Yes. I so instruct the jury that at this time that evidence has no probative force against Kandell. It may or may not later on in the trial of the case. That is to be determined, but at this
629 time the statement with reference to Kandell, what he stated about Kandell has no probative force as against the defendant Kandell.

Q. Was anything said—

Mr. Corbin: Judge, I have not been interrupting. I have not been asking for any such instructions, but all these conversations that the witness has said he had with Schulman, the same will apply to my clients?

The Court: The same rule will apply. This is with reference to Kandell only at this time.

630 Mr. Corbin: Yes, because he has mentioned Goldman's name in the conversation.

Q. Was anything else said about the defendant Kandell at that time? A. I think Mr. Schulman mentioned the fact that he was glad that there had been some disturbance between Kandell and Butler Bros.; he was glad that there was some difficulty between them. That is all I can remember.

The Court: I think this is a good time to take a recess. We will adjourn until 2:15.

(Recess to 2:15 P. M.)

AFTERNOON SESSION. 631

ROBERT HOFFMAN, resumed the stand.

MR. SCHACHNER: Your Honor, I desire at this time to make a statement to clarify the record.

Referring to part A and B, which consist of two sheets of paper, in offering those papers in evidence I erroneously referred to them as Exhibit 5-C. Let the record be corrected to read "Exhibit 5-A and 5-B offered and received in evidence."

The Court: Very well.

Direct examination continued by Mr. Schachner: 632

Q. Before the recess, Mr. Hoffman, you were telling us about the conversation which you had with the defendant Schulman and you had just reached the point, I believe, in which you told us you said something about the defendant Kandell and Butler Brothers. Will you tell us what was said? A. Well, Schulman stated he was glad some disturbance had been created between Butler Brothers and Kandell's office.

Q. Is that all that was said on that occasion? A. No, sir.

Q. What else was said? A. We went into more detailed 633
figures of the moneys that were to be split among the three of us.

Q. Who were those three? A. Goldman's outfit, and he was to take care of Kandell. Schulman was to get a third, and he was to take care of those three creditors who were at the first meeting on March 25th, and who were also before Judge Coxe in his chambers, and I was to get a third to take care of Kolman, to some extent.

Q. You say Goldman was to get one share. Do you mean Morton or Theodore Goldman? A. I mean, in other words, his firm.

634 Q. That is both defendants together, Theodore Goldman and Morton Goldman were to get one share—

Mr. Corbin: I object. He said the firm, and the firm includes others.

The Court: Objection sustained. State what the conversation was. Of course, if Goldman stated that, he can state what the conversation was.

A. The conversation was that Goldman's outfit was to get one third.

Q. Is that all that was said on that occasion? A. Well, 635 there was some talk with regard to the moneys that were to be split, the moneys that were to be gotten from the city, for the relief vouchers, together with the $1200 which was a consideration expressed in the bill of sale, was to be used to pay the creditors 40 percent, and the balance was to be used for administration expenses, that is, the difference between the approximate figure of $1000 required to take care of approximately $2500 liabilities on a 40 percent basis, would make $1000, and the difference between that amount and $1200 consideration expressed in the bill of sale, plus the moneys to be gotten from the city, were to be used for administration expenses.

636 Now that amount called the difference, together with the $400, that was not to be disclosed to creditors, was to be split among the three of us, and that would also serve to take care of Mr. Wishbow's expenses and some of his fees, and some of the other incidental expenses like Schulman mentioned. He wanted an additional $35 for disbursements he had had for the filing of the petition in bankruptcy.

Q. Did you have the bill of sale which you were supposed to prepare with you at that time? A. When, on the 21st?

Q. Yes. A. I had with me the papers which Hymowitz had signed and Schulman had requested.

Q. Did you turn them over to Mr. Schulman? A. Not on the 21st. 637

Q. When did you see Mr. Schulman again? A. I think on the 26th.

Q. Do you remember what time of day it was? A. I think late that day.

Q. At what place did you meet? A. At his office.

Q. What transpired at that meeting? A. I told him that I had spoken to Mr. Wishbow and Mr. Wishbow was concerned about getting his fee out of it.

I also told him I discussed with Mr. Wishbow the matter of the undisclosed amount, the $400, and that Mr. Wishbow suggested that be held jointly by Schulman and myself. 638 Schulman told me Wishbow was crazy, and he said he would not do it.

Then a call was put in from Schulman's office to Wishbow, and there was a discussion between Wishbow and Schulman on the wire. Then when that talk was over Schulman told me, I don't remember whether I got on the telephone with Wishbow; I think I did—and I think Wishbow said he was satisfied, and that was after Schulman had told him that he, Schulman, could be trusted and he would see that everybody got what they were supposed to get.

So I think I turned the papers over to Schulman, and 639 there were certain other papers executed both by Schulman and myself.

Q. Was it decided to establish that joint account? A. No, sir.

Q. It was decided not to establish it, is that your testimony? A. I said not.

Q. Did you turn over certain papers to Mr. Schulman at that occasion? A. I did.

Q. Do you know what they were? A. I think he gave me a receipt for the bill of sale. There was some stipulation with respect to the proceeds from that sale to be

640 applied in the proposed settlement with creditors. There was also some statement or papers signed with respect to the moneys due from the City of New York for those relief vouchers and I think there was another letter of instructions to the firm of Goldman, Malter & Goldman.

Mr. Schachner: Will you mark this, please.

(Marked Government's Exhibit 8 for identification.)

Q. Mr. Hoffman, I show you Government's Exhibit 8 for identification, and ask you whether this is a copy of
641 the bill of sale which you turned over to the defendant Schulman (handing to witness)? A. I think this is a copy of the bill of sale that was turned over to Schulman at that time.

Mr. Schachner: I offer Government's Exhibit 8 in evidence.

Mr. Fielding: No objection.

(Government's Exhibit 8 for identification received in evidence.)

Mr. Schachner: This, ladies and gentlemen, is
642 a bill of sale which provides—(reading to jury).

Q. Did you prepare this bill of sale? A. Yes, sir.

Q. Did you insert the name L. Wein of 430 Grand Street, Manhattan? A. Well, the copy that you have there is in my handwriting, that is, the part that is inserted.

Q. Do you know Mr. Wein? A. I do not know.

Q. Who suggested that the name L. Wein be inserted—A. Mr. Schulman.

Q. —as the purchaser? A. Mr. Schulman.

Q. Did he tell you who Mr. Wein was? A. I don't recollect whether he told me just who he was.

643 Mr. Schachner: Will you mark this for identification.

(Marked Government's Exhibit 9 for identification.)

Q. I show you Government's Exhibit 9 for identification, and ask you whether you also turned over this paper at that occasion (handing to witness)? A. I think I turned over the original of this paper to Schulman.

Q. This Government's Exhibit 9 for identification is a copy of a paper which you turned over to Mr. Schulman, is that right? A. Yes, sir.

644 Mr. Schachner: I offer Government's Exhibit 9 in evidence.

Mr. Fielding: No objection.

(Government's Exhibit 9 for identification received in evidence.)

Mr. Schachner: This is a list of creditors of Paul Hymowitz.

Will you mark this for identification, and also this for identification.

(Marked Government's Exhibits 10 and 11 for identification.) 645

Q. I show you Government's Exhibit 10 for identification, and ask you whether this paper was executed by Jacob P. Schulman and by you on the 26th day of April, 1937 (handing to witness)? A. It was.

Q. Was that at the occasion of this conversation? A. Yes, sir.

Q. And Mr. Schulman executed it in your presence? A. Yes, sir.

Mr. Schachner: I offer Government's Exhibit 10 in evidence.

646 Mr. Fielding: No objection.

(Government's Exhibit 10 for identification received in evidence.)

(Mr. Schachner read Government's Exhibit 10 to the jury.)

Mr. Schachner: There is a postscript to that paper reading—(reading to jury).

Q. I show you Government's Exhibit 11 for identification, and ask you whether you executed it and turned it over to the defendant, Jacob P. Schulman at the same occasion,
647 that is, late in the day April 26, 1937 (handing to witness)? A. I signed it and I turned over a copy to Mr. Schulman and I think this is his—in fact, I am sure this is his—these are his initials, (indicating).

Q. It contains the initials of the defendant Jacob P. Schulman affixed in your presence, is that it? A. Yes, sir.

Mr. Schachner: I offer Government's Exhibit 11 in evidence.

Mr. Fielding: No objection.

(Government's Exhibit 11 for identification received in evidence.)

648 Mr. Schachner: Government's Exhibit 11 is this paper here, which is addressed to Jacob P. Schulman, Esq., 277 Broadway (reading to jury).

The paper bears Robert Hoffman's signature, and in ink here is a mark which reads "O.K." and undecipherable initials which the witness testifies were put on by the defendant Jacob P. Schulman.

Q. I would like to show you Government's Exhibit 2-C in evidence and tell me whether you executed that paper on April 26th on the same occasion when you turned it

over to Mr. Schulman? A. You mean this top sheet (indicating). 649

Q. Yes. A. I did. That is my signature.

Q. Was anything said on that occasion, that is, on April 26th? A. I think at that meeting Schulman told me how good he was in bankruptcy and insolvency matters. He told me if, in the future, I had any problems or any insolvency matters to consult with him and he would show me how to make money out of it.

Q. Did he say anything? A. I don't recall at this time.

Q. Did he explain to you what difference there was in his knowledge of the bankruptcy field and yours? 650

Mr. Fielding: I object to the question, your Honor; it is leading.

The Court: I sustain the objection.

Q. Did he tell you what he knew about the bankruptcy field? A. Yes, sir, he said he knew all the short-cuts, he could make money out of these insolvency matters, and he knows how to go around on those things to make money out of it.

Q. Did he say anything about the manner in which you had conducted yourself? 651

Mr. Fielding: I object to the question as leading.

The Court: Yes, that is somewhat leading, but I think I will overrule the objection to that question, and you may answer it.

Mr. Fielding: Exception.

A. He said you could not make any money honestly in bankruptcy, and he told me I was green at these things, that he would show me how.

Q. After that meeting with the defendant Schulman did you have a discussion with the defendant Theodore Goldman? A. I did.

652 Q. When did that take place? A. Some few days after this last meeting with Schulman.

Q. Where was that? A. Over the telephone.

Q. What did you discuss on that occasion? A. I think we discussed the matter of the affidavits or papers that were to be prepared in connection with the dismissal of the petition in bankruptcy.

Mr. Corbin: May I have the approximate date of that?

Q. Do you remember the approximate date of that dis-
653 cussion? A. I think it was a day or two before Goldman sent in some papers into my office in connection with this motion.

Mr. Corbin: Probably around the 5th or 6th of May?

The Witness: Might be around that, Mr. Corbin, about the 3rd or 4th, perhaps.

Mr. Corbin: The 3rd or 4th?

The Witness: About that.

Mr. Schachner: I ask that this be marked for identification.

654 (Marked Government's Exhibit 12 for identification.)

Q. I show you Government's Exhibit 12 for identification, and ask you whether that refreshes your recollection as to when you had that telephone conversation? A. I would say about, shortly before May 4th, at my office, the same day, and I got the letter on May 5th, perhaps.

Q. What was said at that telephone conversation? A. I think he said he was going to prepare the affidavit for that application, and he also discussed some of the disbursements that had already been incurred to date. In

otherwords, disbursements such as Wishbow had incurred, 655
and some disbursements that I had had. I mean generally that was the substance of the conversation; I don't remember particularly what it was.

Q. Did he tell you how a petition in bankruptcy would be dismissed? A. He did.

Mr. Corbin: By order of the Court.

Q. Did he explain to you how? A. No, he said that he had prepared the necessary papers which would consist of an affidavit and the notice of motion.

Q. Did he tell you on what grounds those papers would 656
be based? A. I don't recall whether he told me in that conversation as to the grounds. I think the affidavit stated specifically the grounds for the application.

Q. Was anything else said then? A. I don't recall at this time.

Q. Was anything said about whether or not Theodore Goldman should be retained as co-attorney to the assignee?

Mr. Fielding: I object to that on the ground that it is leading.

The Court: I will overrule the objection.

Mr. Fielding: Exception.

657

A. I know about that time there was some discussion with regard to the retainers that were to be signed by the assignee, that is, the one regarding the co-assignee and the one in connection with the co-attorney. No, I think it was only with the attorney, Mr. Schachner; I don't think there was any mention made about the co-assignee. I think there was some retainer that was sent in shortly about that time.

Q. I show you Government's Exhibit 12 for identification, and ask you whether you received that about that time? A. I did receive it.

658 Mr. Schachner: I offer Government's Exhibit 12 for identification in evidence.

(Government's Exhibit 12 for identification received in evidence without objection, and read to the jury.)

Mr. Schachner: Let it appear on the record that it has been stipulated that the signature appearing on Government's Exhibit 12 in evidence is the signature of Theodore Goldman.

Mr. Walsh: Any objection?

Mr. Corbin: No. He not only admits but he
659 declares it.

Q. I show you Government's Exhibit 2-D and ask you whether these are the papers that were sent to you and whether you executed them subsequently? A. You mean all of them?

Q. Yes, go through them (hands papers to the witness). A. The first paper a retainer, retaining Goldman, Malter & Goldman as co-attorneys.

Mr. Corbin: Signed by whom?

The Witness: Signed by Theodore Goldman on
660 behalf of that firm, and signed by me. You want me to describe them?

Mr. Schachner: No, that will be all right.

(Mr. Schachner reads Government's Exhibit 2-D to the jury.)

Mr. Schachner: Will you please mark this for identification.

(Marked Government's Exhibit 13 for identification.)

Q. I show you Government's Exhibit 13 for identification and ask you whether you received that (handing witness). A. Yes.

Mr. Schachner: I offer Government's Exhibit 13 661
in evidence. Let the record show that there is a stipulation admitting that Theodore Goldman, a defendant in this case, signed this letter.

(Government's Exhibit 13 for identification received in evidence.)

Mr. Schachner: The letter reads—(Reading to jury.)

The notice of appearance is Government's Exhibit 3, which reads—(reading to jury).

There is a further part of Exhibit 3 that I would like to read to you. It is an affidavit signed by 662
Robert Hoffman.

Q. Who prepared that affidavit, Mr. Hoffman? A. I understand that Theodore Goldman prepared it.

Q. What do you mean you understand? A. Well, he told me he was going to prepare it and he sent it.

Mr. Schachner: (To the jury) This reads as follows: (Reading to the jury.)

Will you mark this for identification.

(Marked Government's Exhibit 14 for identification.) 663

Q. I show you Government's Exhibit 14 for identification and ask you whether this letter was received by you (handing witness). A. This letter was received by me.

Mr. Schachner: Let the record show that there is a stipulation to the effect that the defendant Theodore Goldman signed this letter.

I offer Government's Exhibit 14 in evidence.

Mr. Fielding: No objection.

(Government's Exhibit 14 for identification received in evidence.)

664 Mr. Schachner: This letter is addressed to Robert Hoffman and is dated May 19, 1937, and it reads: (reading to the jury).

Will you please mark these for identification.

(Marked Government's Exhibits 14-A, 14-B and 14-C for identification)

Q. I show you Government's Exhibit 14-A for identification and ask you whether this is what you received from the defendant Theodore Goldman (handing witness). A. I received it from Goldman, Malter & Goldman.

Q. In a letter signed by Theodore Goldman? A. That
665 is right.

Q. I show you Government's Exhibit 14-B for identification and ask you whether that was received by you enclosed in the same letter (handing witness). A. It was.

Q. And I show you Government's Exhibit 14-C and ask you whether that was enclosed in the same letter (handing witness). A. It was.

Mr. Schachner: I offer Government's Exhibits 14-A, B and C in evidence.

Mr. Fielding: No objection.

(Government's Exhibits 14-A, 14-B and 14-C for
666 identification received in evidence.)

Mr. Schachner: (To the jury) Government's Exhibit 14-A is a letter addressed to Goldman, Malter & Goldman, and it was evidently to be signed by Paul Hymowitz. It states, in effect, that Paul Hymowitz agrees to turn over his business at 346 Bowery for $1500. It turns over a bill of sale executed to him, that is, to Hymowitz, by A. Rothlein in connection therewith, and authorizes Goldman, Malter & Goldman to obtain from A. Rothlein the sum of $1500 upon delivery of the bill of sale, and

the sum of $1500 Goldman, Malter & Goldman are authorized to deposit in their account for use of the money for following purposes— (Reading to the jury). 667

The second paper is a bill of sale stating: (Reading to the jury.)

Government's Exhibit 14-C is a paper providing in effect that if this assignment for this bill of sale should be insufficient to transfer Paul Hymowitz's interest in the $300 and whatever other money was due him from the City of New York, then by this paper he agrees to transfer whatever moneys are due him from the City to Goldman, Malter & Goldman. 668

Mr. Corbin: Just a catch-all.

Mr. Schachner: That is right.

By Mr. Schachner:

Q. Did Mr. Goldman or anyone else explain to you why this second bill of sale was sent to you? A. I don't remember any explanation being made on why this bill of sale was sent to me.

Q. Do you know now why it was sent to you?

Mr. Corbin: That is objected to.

The Court: Yes. I will sustain the objection unless it was some information that he got from one of the defendants. Of course if either one of the defendants said anything to him about it, it would be competent; otherwise I will sustain the objection as his conclusion. 669

Mr. Schachner: I will withdraw the question.

The Court: Very well.

Q. Did you follow through with the plan that you agreed upon? A. No, sir.

Mr. Schachner: That is all.

670 The Court: I believe before we begin the cross examination, we will take a three or four-minute recess.

(Short recess.)

Mr. Schachner: Before the cross examination begins I would like to add an exhibit to the record, your Honor.

The Court: Very well.

Mr. Schachner: I ask that this be marked for identification.

Mr. Corbin: Put it right in evidence.

671 (Marked Government's Exhibit No. 15.)

(Mr. Schachner read Exhibit 15 to the jury.)

Mr. Schachner: I would like to ask one more question of the witness, your Honor.

The Court: Yes.

By Mr. Schachner:

Q. Were you consulted before these papers were sent out? A. I was not.

Mr. Schachner: That is all.

672 Cross examination by Mr. Corbin:

Q. What difference does that make to you, whether you were consulted or not? A. I don't understand your question, Mr. Corbin.

Q. You heard it? A. I heard it.

Q. Let me get one subject cleaned up as quickly as I can, and I think I can do it in one question: Was there anything from the beginning to the end of the Hymowitz matter that Theodore Goldman did that was wrong, so far as you personally know; just yes or no to that.

Mr. Walsh: I object to the form of the question.

That is a question for the jury to decide from the evidence elicited throughout the whole trial. 673

The Court: I sustain the objection.

Mr. Corbin: I respectfully except.

Q. You know what it is to be a lawyer. You are a lawyer? A. I am a lawyer.

Q. And you know something about bankruptcy practice, don't you? A. Something.

Q. Just slightly, you mean by that? A. It is a question of degree.

Q. Just slightly? A. Just slightly.

Q. You don't want to— 674

Mr. Walsh: I object to the characterization "something." If he wants to test him let him do so.

The Court: Objection overruled.

Q. The way you said "something," did you want the jury to understand from that that you only had a slight acquaintance with bankruptcy practice? A. No. There is so much to it.

Q. And you had a lot to do with it? A. No.

Q. How long have you been practicing? A. About 12 years. 675

Q. During the year 1937 how many bankruptcy matters did you handle? A. I cannot recall. Very few, if any, during 1937.

Q. Does that apply to 1938? A. When you say "bankruptcy," do you mean assignment proceedings also?

Q. All insolvency proceedings. You had a lot to do with those things? A. What do you mean by "a lot"?

Q. Well, a large percentage of your practice has been in that field, has it not? A. It has not.

Q. What percentage has it been in connection with such matters? A. Do you mean the number of cases?

676 Q. In percentage. A. You mean the number of cases in insolvency as compared with the other type of cases?

Q. Insolvencies, including bankruptcies. A. As compared with other type of cases?

Q. Yes. A. Maybe a fraction of a per cent.

Q. Well, what would you say? 7/8 or 1/8 or one per cent, or what? A. I couldn't tell you.

Q. What fraction did you have in mind? A. I could not even figure that out.

Q. You still insist that your percentage in that kind of matter may be stated in terms of a fraction of one per cent? A. I would say that.

677 Q. You want to stick to that? A. I would like to.

Q. On thoughtful reflection, you say it was not more than a fraction of one percent? A. That is correct.

Q. Where do you practice? A. New York City. You mean where is my office? In the City of New York.

Q. Give us the address. A. 1270 Broadway.

Q. What street is that? A. 33rd Street.

Q. How long have you been there? A. Oh, about 10 years.

Q. You had to do with Paul Hymowitz by some distant relationship, is that right? A. Well, I wouldn't call it a

678 relationship.

Q. All right. I don't mean to misstate it at all or exaggerate it. There was distant relationship; you gave it to us? A. Yes, sir. He is a nephew of a brother-in-law of mine.

Q. You have some such relationship with him, a distant relationship. A. Is that a relationship, Mr. Corbin?

Q. Are you trying this case? A. I am asking you. I am telling you.

Q. You want to ask me? A. (No answer.)

Q. Are you still a stool pigeon for the Government?

Mr. Walsh: I object to the characterization, your

Honor. I also ask that Mr. Corbin be more careful with his language. 679

The Court: Objection sustained.

Q. You have been with the Government agents for a long while preparing this case, getting ready to testify in it yourself? A. Since April 5 of 1937.

Q. And you knew one of the Goldman firm pretty well? A. You mean Mr. Malter?

Q. Yes. A. Yes, sir, I know him for ten years or so, or ten years prior to 1937.

Q. Did you tell him you were spying on his partners? 680

Mr. Walsh: I object to the characterization.

The Court: Same ruling.

Q. Did you tell you had been to the FBI and was working with them on a matter trying to implicate or involve his partners, or either of them?

Mr. Walsh: I object to the form of the question, your Honor.

The Court: Same ruling.

Mr. Walsh: If the man wants to—

The Court: When I sustain an objection or overrule an objection I don't care to hear any further argument than from the one who is making the objection, and if the one against whom I rule thinks I am in error and has a reasonable basis for it, I will hear from him, but after I have ruled in favor of a person I don't care to hear from him further. So I will sustain the objection to that question. 681

Q. So Paul and you were known to each other for a long while prior to March of 1937? A. Quite a while.

Q. Well, about how long? A. I should say about 1921 or 2.

682 Q. And you had done some business for others members of the family? A. Yes, sir.

Q. And he got in trouble and got over on Rikers Island, right? A. That is what I was told and that is what I understand when I saw him there.

Q. Your answer is yes? A. Yes is the answer.

Q. All right. And you went over there armed with a paper, did you? A. I went over there with a paper.

Q. What was the paper? A. A form of assignment for the benefit of creditors.

Q. You hadn't talked with Paul Hymowitz about any assignment for the benefit of creditors before you prepared
683 it, had you? A. No, sir.

Q. So that— A. Just a second. May I—

Q. Was that your idea, to prepare that paper? A. Now may I answer that?

Q. I thought you did. A. May I modify it?

Q. Certainly. Change anything you want to. A. I am not sure whether I prepared the paper at my office before I went up to see Hymowitz or whether I prepared it while I was at Rikers Island visiting Paul Hymowitz.

Q. Well, you took a form over, didn't you? A. I had a form with me.

684 Q. Whether it was made out before you left the office or over there you say you don't now recall? A. That is correct.

Q. All right. The fact remains that you hadn't talked with Hymowitz about any assignment for the benefit of creditors before you put that form in your pocket to take over? A. That is correct.

Q. Yes. That was your idea? A. That is correct.

Q. All right. Was it your idea to put your office associate in as assignee? A. That is correct.

Q. His name was Kolman? A. That is right.

Q. How do you spell that? A. K-o-l-m-a-n.

Q. All right. Kolman was on a salary in your office? A. 685
He was on a salary basis and also had the right to practice in his own behalf.

Q. Well, so far as— A. He had the facilities in my office for that purpose.

Q. So far as this is concerned, at this time he was on a salary? A. At that time he was on a basis, that I just told you about.

Q. Well, anything that you had wasn't anything that he was practicing for independently, was he? A. Well, if I had the—he was supposed to work on my cases.

Q. For what you paid him? A. That is correct, and the 686
facilities—

Q. And the Hymowitz being your case— A. No. Let me answer—

Q. —was a matter which you would have him work on on the salary basis? A. No. I say in addition to the salary—

Q That is wrong, is it?

The Court: Let him answer, Mr. Corbin. One at a time, gentlemen.

A. In addition to the salary I also provided him with facilities. 687

Q. All right. The Hymowitz matter was your matter. It wasn't his matter, was it? A. That is correct.

Q. So that what he did on the Hymowitz matter was not practicing law by himself that you say he had the right to do, was it? A. If he was the assignee.

Q. If he was? A. And if it was due to him he was to receive it and I had no part of that.

Q. That didn't come off his salary? A. That did not.

Q. He did not turn any part of that over to you? A. He did not.

688 Q. He finally got $88, didn't he? A. Is that the amount he got?

Q. Well, you are asking me. A. Have you got the record?

Q. Have you? A. Not with me.

Q. Are you going to argue this case to the jury? A. I am not.

Q. Do you want to? A. No, sir.

Q. Are you interested? A. To what extent?

Q. To see these men suffer in jail for something you say they did. A. Not at all, Mr. Corbin.

Q. All right.

689 Mr. Walsh: I object to that.

The Court: I will overrule the objection.

Q. You are a straight, impartial, fair witness according to your own thought and feeling, isn't that right? A. I took the oath to tell the truth and I am going to tell it.

Q. Yes. And you are not going to color it to put them in jail, are you? A. I am not.

Q. All right. So you got Hymowitz to sign that paper that you prepared? A. I explained it to Hymowitz and he signed it.

Q. On the dotted line? A. On the line.

690 Q. Well, was it typewritten or did you fill out the form in ink? A. I think it was in ink. I am not sure. If you have it here I will be able to tell you much better.

Q. I was just wondering whether you remembered writing it out. A. I think I may have written it out, Mr. Corbin.

Q. You don't know me, do you? A. No, but I understand that you are a—

Q. I don't care what you think I am. A. Well, I think very highly of you, Mr. Corbin.

Q. Yes? A. Your reputation is such, anyway.

Q. Well, I am sorry I can't return the compliment. A. Well, I am not asking for your—

The Court: Very well, gentlemen. Let us get down to the case. 691

Q. Now let us see where we are at. You got the paper signed, didn't you? A. I did.

Q. And that gave a job to a man who was employed in your office? A. He was the assignee under a—

Q. I say, that gave him a job? A. He was the assignee designated in that assignment.

Q. Well, can't you understand my language? A. I understand your language. I understand your language.

Q. That paper gave him a job, didn't it? A. What do you mean by "a job"? 692

Q. It gave him a job to do for which he was going to get some cash, isn't that right? A. You mean received payment?

Q. Yes, cash. A. By order of the Court?

Q. In cash. A. Or by check?

Q. Well, all right, all right. Let us pass to something else. I think we got you. A. Maybe you haven't.

Q. All right. He did get some cash and you say you did not get any of it? A. He got a check and he cashed it, I assume, and he kept whatever he cashed, and I got no part of it.

693

Q. Then the point of my question was somewhere near accurate? A. Well, it was something to do about it.

Q. Something to do about cash. All right. You got a job too out of it, didn't you? A. You mean I was retained by the assignee?

Q. Oh, were you? A. I was.

Q. Well, first you got him a job and then he got you a job, is that it? A. (No response.)

Q. Did you talk with him about retaining you? A. I did.

Q. Did you tell him that there were a lot of other good

694 lawyers in New York that he could retain, he didn't have to get you? A. But possibly not trust.

Q. Oh, it was that you explained to him that he could trust you? A. I didn't have to explain it to him.

Q. You say he knew he could trust you? A. You can ask him later on.

Q. And you knew that you could trust him, didn't you? A. I certainly had had confidence in him and trust him.

Q. And did then have trust in him? A. And since then.

Q. And then, I say? A. And then too.

Q. All right. And with that utmost of mutual confidence and trust reposed by each in the other he, by virtue of the
695 paper, plus another paper, became the assignee and you became the attorney or counsel for the assignee; right? A. Well, by virtue—

Q. Right? A. I—

Q. Right or wrong? A. Will you repeat the question first?

Q. (Read.) A. The assignor made him the assignee and the retainer made by him made me the attorney for the assignee.

Q. All right. Now who did you represent? Who retained you? A. I was consulted by Mrs. Hymowitz, that is, Paul's mother, and by his brother Simon, and his
696 sister Flo.

Q. Well, didn't Paul, the debtor, the assignor retain you when you visited him on Rikers Island? A. He did not.

Q. Who authorized you to prepare the paper over there in longhand? A. He did.

Q. Well, he did ask you to do it and retained you to do it? A. No. He said that I should prepare the paper then and the paper was prepared to make Kolman as assignee.

Q. All right. But, he is the one who authorized you and the only one in the world who could authorize you to

do it, wasn't he? A. Well, the only one who can do it is 697
an assignor, Mr. Corbin.

Q. Well, why did you say you weren't retained by him to do it? A. I was not employed by him. I received no fee from him.

Q. You handle lots of matters without fees, don't you? A. Sometimes.

Q. Still employed? A. Pardon?

Q. Although you are still employed? A. Yes.

Q. Paul Hymowitz asked you to prepare the assignment over on Rikers Island, didn't he? A. Yes.

Q. That was an employment, wasn't it? A. Well, do you call it such— 698

Q. But you were there as a lawyer, weren't you? A. Yes, sir.

Q. He knew that? A. Yes, sir.

Q. And you had brought over a legal form and prepared it at his request for him to sign? A. Yes, sir.

Q. Do you say that wasn't an employment or a retainer? A. I won't argue the point with you, Mr. Corbin. If you say it is an employment or retainer, if it makes any difference, that is what it was.

Q. What do you say? A. I say he just requested me to fill out that paper for him to sign, retaining Kolman or, 699
rather, assigning that to Kolman.

Q. Well, did you tell him that you were going to be the attorney for Kolman? A. I told him I expected to be the attorney retained by Kolman.

Q. All this went on without any indication by you to Kolman, did it? A. I think I told Kolman before I went up there what I was going up there for.

Q. Yes. So you told him you were going over there to get him appointed? A. I think so.

Q. And told him if you did succeed that you would expect to be his attorney? A. I told him I would talk that over

700 with the assignor and I also discussed that with Kolman.

Q. Well, you had enough trust in Kolman to know that he would fix you up with a retainer if you got him appointed, didn't you? A. What do you mean by "fix you up"?

Q. Well, sign a retainer. A. I expected that.

Q. Thereafter didn't you regard that represented Paul Hymowitz or any of his family in the premises? A. To some extent, yes, his mother and sister.

Q. To what extent? A. That they had loans there totaling $1900.

Q. What extent did you regard that so that you continued to represent Hymowitz himself? A. If there was
701 any representation there it was only for one purpose, and that was to see that creditors got everything that could have been gotten out of that estate.

Q. And that was your sole purpose from the beginning to end, wasn't it? A. That was Hymowitz's wish, and I tried to carry that out.

Q. That was your sole purpose? A. To follow Hymowitz's wish and his parent's wish—or, rather, his parent's wish.

Q. Your sole purpose was to get the creditors every last dollar that they could get? A. My purpose there was to have an honest administration of the estate. That was the
702 main purpose.

Q. The main purpose? A. And also to see that the creditors felt kindly toward Hymowitz so that in the event that he got out of Rikers Island and wanted to go into business he could go into business on a much better basis than if it wasn't administered properly.

Q. And is that why you lied to the creditors about the value of the estate? A. I lied to nobody.

Q. All right. Let us see. A. Let us see.

Q. Let me show you a paper, and I ask you if you recognize it as a copy of a petition that you made to the Supreme Court in the assignment proceeding and verified

apparently on December 6, 1937. A. Do you say that is a 703
copy of the original? If you do I will take your word for it.

Q. Now let us not get throwing flowers.

Mr. Mintzer: The original is here.

Mr Schaehner: If you say, Mr. Corbin, that is a copy we will take your word for it.

A. Mr. Corbin, perhaps I can recall the statement you intend referring to.

Q. All prepared, eh? A. (No response.)

Q. Something in here that you think might occur to me as bothersome to you? A. No, bothersome to you. 704

Q. Oh. Well, I will take care of that. A. All right.

Q. Because you thought it might be bothersome to me is why you volunteered this remark, isn't it? A. No, I am trying to help out.

Mr. Walsh: I object to that.

Q. Trying to help me out? A. (No response.)

Mr. Walsh: Go ahead. If you say it is a copy, ask him a question.

Mr. Corbin: I think I will use this, Judge. 705

The Court: Very well.

Q. Let me show you this paragraph on the second page—

Mr. Walsh: Mr. Corbin, if you prefer to use this, this is part of Government's 2 in evidence (handing to Mr. Corbin).

Mr. Corbin: All right.

Q. "That thereafter and on the 25th day of March, 1937, an order was entered authorizing the assignee to qualify by filing a provisional bond in the sum of $1500."

706 Do you see that statement? A. Yes, sir.

Q. Now that does not mean that you actually entered that order, does it? A. No.

Q. Personally? A. No, sir.

Q. Somebody in your office may have done it? A. Yes, sir.

Q. Because you don't say that you did that yourself? A. Not necessarily.

Q. I say, the language merely is, "That thereafter" an order was entered. That is right, isn't it? A. It says an order was entered.

Q. Yes. Now you didn't do that yourself? A. No, sir.

707 Q. And that is why you drew the statement in that form? A. Not necessarily.

Q. All right. A. It may have been drawn in a different form.

Q. Then in the next sentence, "I thereupon arranged," and so forth, that means that you did that yourself personally, doesn't it? A. Not necessarily.

Q. No? A. No, sir.

Q. When you make an affidavit and say, "I saw somebody," does that mean that somebody else saw somebody? A. That is "I thereupon"—

708 Mr. Walsh: I object to that as argumentative.

The Court: I sustain the objection.

Q. What do you mean to tell this Court and jury when you say that "I" in an affidavit, that that means somebody else? A. It means me, I.

Mr. Walsh: I object to that question.

The Court: I sustain the objection.

Q. That means I, does it? A. (No response.)

Q. So when you said in this same paper—and you did verify it, didn't you? A. Is my signature there, verified?

Q. I will see. Is that your signature (indicating)? A. 709
That looks like it, yes.

Q. Twice? A. My signature.

Q. Sworn by you on December 6, 1937? A. That is correct.

Q. Whereabouts? Is that somebody in your office, the notary (indicating)? A. I don't recognize the name. What is the name there, Dody?

Q. I can't tell. A. That may have been in the same building. I think there was some insurance firm by that name.

Q. You prepared, signed, and verified and swore to the paper, right? A. I signed it and swore to it. 710

Q. Did you prepare it? A. I dictated it.

Q. All right. That is what we ordinarily refer to as preparing a paper, isn't it? A. I suppose so.

Q. Yes. Well, at the top of that page you say "I then" and the sentence before that— A. Do you want me to follow you while you are reading it?

Q. Yes. In the sentence before it says that the retainer was filed on the 25th of March. A. Yes.

Q. And the next paragraph is "I then immediately prepared a petition and order authorizing the assignee to qualify by filing a provisional bond" and so forth, is that right? A. What is your question? 711

Q. Now what I want to know is does that "I" mean I? A. In that particular sentence?

Q. In that particular sentence? A. You mean me personally?

Q. Just you, right, Robert Hoffman sitting right in the witness chair. A. No, sir. It means my office in that particular instance.

Q. It doesn't mean you? A. (No response.)

Q. You mean that you dictated and signed and swore to

712 a statement that wasn't true? A. Mr. Corbin, whatever is there I signed.

Q. Did or did you not? A. I signed to and swore to it.

Q. What is that? A. Whatever is in that paper I signed to and swore to.

Q. Was it true when you dictated it and swore to it? A. True to the extent that my office prepared it and had it filed.

Q. Was it true to the extent that it says "I then immediately prepared"? A. That I personally? Is that your question?

Q. Do you have to say "positively" or "absolutely" after
713 everything? When you say "I then prepared the paper" you meant it, didn't you? A. I said personally, not positively or absolutely.

Q. No. When you dictated it and when you signed it? A. Now what is your question? You have got so many in one—can we get that, please?

Q. When you dictated the words "I then immediately prepared the application for the bond"— A. Yes.

Q. You meant to say exactly what you dictated which was that you did that work? A. I did not do it personally.

Q. Well, why didn't you say so then?

714 Mr. Schachner: I submit that he said that twenty times already, if your Honor pleases.

The Court: Well, I am going to overrule the objection. This is cross examination.

Q. If when you were dictating this paper you intended to convey the idea, the impression, to the Court that not you but somebody else did that work, why didn't you say so?

Mr. Walsh: Objected to as argumentative.

The Court: I will allow it.

A. At that time I may have been under the impression 715
that I took care of it, but I later found out that Kolman, of my office, actually attended to it.

Q. Tell me, it is three years ago that you dictated, signed and swore to this affidavit? A. That is correct.

Q. You mean to tell us here that your recollection is better now than it was then, three years ago? A. Of course not.

Q. Then when you say that you dictated it, you were under the impression that you had prepared the application for the bond; isn't it true your recollection was better then and fresher than it is today, when you say now it was not you who did it? A. When that petition was prepared 716
I think it was about nine months after the order for the sale was obtained.

Q. It was in 1937? A. In December of 1937, about nine months after, and I think a lot of other proceedings took place that were enumerated in that petition.

Q. Now this morning you heard me read a portion from that affidavit that Mr. Schachner omitted, didn't you? You remember the occasion of my reading to the jury a portion of that affidavit? A. Yes, sir.

Q. Then when you went on the stand and Mr. Schachner asked you about the papers, only part of which was read to 717
the jury, then you said to him, or in answer to his question, in substance, did you not, that you didn't prepare that petition? A. I think that was the question and that was my answer.

Q. On December 6, 1937, fresh after the event, you swore that you did prepare it, didn't you? A. I swore to that petition that was dated December 6, 1937, and signed it, too.

Q. When you signed and swore to it you knew it contained a statement that you then immediately prepared that petition? A. I looked the petition over before I signed it.

718 Q. In fact, to repeat, you dictated it yourself? A. I certainly did.

Q. So that from start to finish this affidavit of December, 1937, was your own baby, your own child, your own language, and your own choice of words, right? A. I dictated that petition.

Q. And now you say that that is wrong, do you? A. I say that particular part of it is incorrect, to the extent that Kolman took care of obtaining that order for the sale.

Q. Did you understand that I was asking about Kolman, or you, or anybody else, obtaining the order for the sale? A. Isn't that affidavit in connection with an order for the
719 provisional bond and sale?

Q. I am not talking about obtaining the order at all. I am talking about the petition that Kolman verified over your signature, as attorney for him, in which he stated that the value of the entire estate was $1500. You know what I am talking about, don't you? A. Do you mean to say, Mr. Corbin, that the petition that was signed by Kolman in connection with getting an order for a sale—

Q. And a bond. A. Had also my signature?

Q. It was in your own office folder, wasn't it? A. It was in my office folder?

720 Q. Yes. A. Every case I have in my office of my own is in my own office folders.

Q. Let me show you a paper and ask you if you prepared this paper? It is marked. It is in evidence here as something or other—

Mr. Walsh: That is Government's Exhibit 2, Mr. Corbin, that is from the assignment file.

Mr. Corbin: Government's Exhibit 2?

Mr. Walsh: Yes, sir.

Mr. Corbin: Thank you.

Q. Did you prepare that paper personally (handing to witness)? A. It was prepared in my office. 721

Q. Did you prepare that paper personally? A. When you say "prepared" do you mean typed or dictated?

Q. I don't mean you put your fingers on the typewriting machine. Did you dictate that paper? A. I may have told the stenographer to—

Q. Did you? Did you prepare that paper?

Mr. Walsh: I think the witness should at least be allowed to answer one question before five more are put to him.

The Court: The witness can answer yes or no, or that he don't remember, or he can answer with an explanation. Counsel is entitled to an answer whether he did or did not, if he knows; if not, he can so state. 722

A. I think I told the stenographer to dictate that particular form of retainer.

Q. That particular form of retainer? A. There are different forms of retainers, Mr. Corbin. In other words, this is a retainer by the assignee.

Q. Let me see it. (Witness hands paper to Mr. Corbin.) I, S. Kolman, as assignee of Paul Hymowitz, under an assignment dated March, 1937, do hereby retain Robert Hoffman as my attorney in this proceeding. You say you didn't prepare that? A. I may have prepared it by telling the stenographer to get up that particular form of retainer. There are forms in book form, Mr. Corbin. 723

Q. Have you got to go to a book of forms to prepare such a paper? A. No, sir, I save myself time and trouble and just put my name on it.

Q. You could dictate it quicker than doing it that way. Look at the paper again. Is it not a fact to your present recollection— A. (Interrupting) I don't know. It may

724 have been prepared at my instructions, most likely it was.

Q. Prepared at your dictation? A. I don't think it was dictated.

Q. Would you say it was not? A. It may have been, I wouldn't say it was or was not, it may have been.

Q. You say that paper may have been prepared through your dictation. Let me show you another paper from the same file, and ask you if that was prepared by you personally on the same day, written out on the same machine, the date filled in on the same machine, and not in handwriting as in the other paper. A. What is your question?

Q. Did you prepare that personally? A. Did I prepare
725 this paper?

Q. Yes. A. I think Kolman may have prepared that or the auctioneer may have prepared that together with Kolman. Is that the order for the sale? I think it may have been prepared at the auctioneer's office. I know Kolman at that particular time was going back and forth from the auctioneer's office to my office. There were certain mimeograph copies gotten out that day, and so I think—

Q. (Interrupting) So you had the auctioneer working for you, preparing legal papers? A. I didn't say he prepared legal papers.

726 Q. You say he may have prepared it for you. A. I said Kolman and he were working together.

Q. I don't care who the auctioneer was working with together or whether he worked for you in the preparation of that paper. A. I don't think that the auctioneer prepared it. I said it may have been prepared at his office.

Q. On his machine, down at his office? A. It may have been at his office.

Q. Was the retainer that Kolman signed retaining you to act for him as assignee prepared in the auctioneer's office? A. If it is at the same time, it may have been prepared at the auctioneer's office by Mr. Kolman. That is possible, too.

Q. Anything is possible. A. Well, that is probable. Let 727
us put it that way.

Q. Now it is probable. A. That these were prepared at Mr. Wishbow's office during which time Kolman was there.

Q. So that now your best guess is neither one of these papers was ever prepared in your office; is that your best guess? A. I think it is.

Q. And your best guess is you didn't have anything to do with either one of them? A. Yes, sir, I had to sign that paper before it was sent out.

Q. Before it was written out? A. No, I think Kolman 728
may have prepared that or had it prepared.

Q. Both of them? A. I think so.

Q. On the same day? A. If they are dated the same day.

Q. They are dated the same day. Ann Squire, do you know who Ann Squire is?

Mr. Walsh: May I suggest that you describe the paper so that the record will at least be clear.

The Court: Let him examine the witness.

Mr. Walsh: Your Honor, I wish you would let the record be clear. It is already in evidence as Exhibit 2. It is filed from the assignment bureau, 729
County Clerk's office. It is in the record.

The Court: Well possibly to clarify the record, but if he desires to cross examine the witness any other way, he has a right to do so as long as it is on relevant matters.

Mr. Walsh: I didn't make any objection. I merely made a suggestion to Mr. Corbin.

The Court: Overruled. He may cross examine him as he sees fit. If the witness doesn't understand the question he has a right to explain why.

730 Q. I asked you did you know who Ann Squire was? A. I don't know.

Q. She appears to be a Commissioner of Deeds who signed a paper from Exhibit 2 that I show you here. Was she in your office or in your building? A. She was not in my office.

Q. Was that paper prepared in your office, the one I am showing you now? A. I don't think it was.

Q. Where was this auctioneer's office where you had your legal work done, or some of it? A. The auctioneer's office was at 40th Street, I believe.

Q. And you said you were at 33rd Street? A. Yes, sir.

731 Q. You had somebody going back and forth to that office getting papers and having them prepared and taking them back and forth? A. I think Kolman might have done that, or Wishbow may have gone back and forth. Wishbow had a machine for mimeographing papers.

Q. These are not mimeographed papers. These are original papers produced from the typewriting machine itself. A. I have the notice of sale where the mimeographs were made.

Q. Let us forget those. I am talking about these papers. A. This doesn't look like a mimeograph paper (indicating).

Q. Was it customary to have Wishbow going back from your office and vice versa, to prepare and return legal

732 papers? A. I think that is the first time that Wishbow ever done any work for me.

Q. Has he been doing it since? A. I think in one matter.

Q. Typewriting? A. No, acting as an auctioneer.

Q. Did he have a typewriter up in his office? A. I don't think so. I have never been in his office.

Q. Has he a stenographer? A. He may have.

Q. You don't know if he has got a stenographer or typewriter? A. I couldn't tell you.

Q. You don't know whether he had either one of them then? A. Either what?

Q. In March of 1937, either a girl stenographer or a man stenographer or any kind of a stenographer, or a typewriting machine? A. No, I don't know that. 733

Q. Well, did you have a typewriter down in your office? A. Oh, yes, we had several.

Q. "We?" A. Yes, sir.

Q. You mean you and Kolman? A. No, I have another office associate.

Q. Wasn't Kolman located in your office? A. He was.

Q. Who was the other man? A. Parodneck.

Q. Did you have a girl there that ran a typewriting machine? A. I had two.

Q. Two. All right. 734

Q. You notice the two papers we are talking about are in rather small type, compared with some other type, or don't you? Let me show you that (shows to witness). A. These are about the same size, I think larger type (indicating).

Q. It is slightly smaller type than the usual type that you see. A. I say that which you have in your right hand, it is smaller in type than the one you have in your left hand.

Q. What I am wondering at is whether the character of the type used in the preparation of these two papers we are talking about looks familiar to you as the character of the type that your typing machine produces? A. Well, I have only one machine of my own. The other machine is used for the work of the other attorney. Sometimes in a pinch we use two machines. 735

Q. Does this look like the type, like the kind of papers that your machines, or either of them, turn out? A. Well, I know the one you have in your left hand is the type of machine that I owned, or I had there in 1937.

Q. How about the other machine? A. I am not familiar with the type on the other machine.

736 Q. You never knew Wishbaw before this case? A. I don't think I did.

Q. How did you get in touch with him? A. I communicated with a firm by the name of Joseph, I think it was, and they told me that he had died.

Q. Joseph died? A. Some years before.

Q. Joseph died, you learned? A. Yes, sir.

Q. And Wishbaw, what about him? A. And they referred me to Wishbaw and gave me his phone number. They said he was handling matters of auctioneering.

Q. Then he came over to your office? A. I think he did.

737 Q. And you told him to get ready to sell that stock on the Bowery? A. No. I think we went down to the store premises and there met Mrs. Hymowitz.

Q. You retained Wishbaw to act as auctioneer? A. When?

Q. Some time or other? A. Sometime. I mean formally he was obtained by the assignee.

Q. Did you agree with him on what his compensation would be? A. No. He said he would be very reasonable in amount. I think there was a minimum there of 6 per cent, if I am not mistaken, but he said he wanted to go

738 down and see what the situation was. I think there is a statute that permits up to 10 per cent.

Q. You and Wishbaw got very friendly, didn't you? A. He is nice, pleasant sort of chap.

Q. He likes you and you like him? A. There is nothing wrong in that, as far as I know.

Q. Okay. That is all right by me. He got a lot more than 6 per cent? A. Out of this one?

Q. How much did he get? A. 5 per cent.

Q. Well, in dollars? A. I couldn't tell you. You have the record here.

Q. Didn't he get around $300 or over? A. Half went to 739
Lipkowitz, another auctioneer, put in here by the defendants.

Q. You didn't like that thought, did you? You didn't want anybody going in on Wishbaw's fees?

Mr. Walsh: I object to that as argumentative.

Mr. Corbin: It is obvious from the way he said it.

Mr. Walsh: I object to the argument by Mr. Corbin.

The Court: Objection overruled to the last question as to whether he wanted Lipkowitz to come in here.

740

A. No, I didn't like Lipkowitz in the picture.

Q. And you don't find any difficulty in expressing yourself when you feel a little put out about something? A. About what?

Q. About anything? A. Well, you usually talk the way you feel.

Q. And, incidentally, you felt pretty sore down there before Judge Coxe that day, didn't you? A. I was pretty sore, very much.

Q. And you acted accordingly, didn't you?

Mr. Walsh: I object to that.

The Court: No. 741

Q. That day you ran right up to the FBI to squeal on somebody? A. No. I went to Referee Kurtz and he suggested that I tell my story to the Federal Bureau of Investigation. Now you have got it in. You asked me for it.

Q. I did? Now you got it in, what was ruled out on direct examination as to what Kurtz told you. You, as a lawyer, knew when making that answer now that you were trying to make a real effort to put something in the record that should not be in? A. Your questions are not coached in such clear language.

742 Q. That is why you tried to put that over? A. I tried to?
Q. You squealed to the FBI.

Mr. Walsh: I press my objection.

The Court: Objection sustained.

Mr. Corbin: Well, he said I did not. Does the answer go out too, your Honor?

The Court: Yes, the answer goes out too.

Mr. Corbin: I would just as soon let it in.

Q. Why did you go to the FBI for, a pink tea? A. No. I was asked by Referee Kurtz to tell my story to the
743 Federal Bureau of Investigation.

Q. And you told them plenty, didn't you? A. Why, they came down to his office.

Q. And you got right on the job with them and worked with them, tried to get wires placed so that the conversation could be heard that you set up? A. No, they got on the job.

Q. Not through your efforts at all? A. I had to cooperate with them when they asked me.

Q. And you did cooperate with them completely, day in and day out? A. I did.

Q. And you were awfully glad to do it? A. I was not.
744 Q. Tickled to death to do it?

Mr. Walsh. I object to that as argumentative.

Q. You say that Paul Hymowitz had some claims against him. Did you inquire as to the nature of those claims? A. I did.

Q. What were they for, just briefly? A. Money loaned.

Q. Real cash that you understood and believed was money loaned? A. I think there were some bankbooks showing withdrawals.

Q. Well, then they had perfect legitimate honest claims against Hymowitz? A. To some extent.

Q. You told us to the extent of $1900. A. As far as I knew there were some withdrawals from certain savings accounts. I didn't check up the entire $1900. 745

Q. At least you were satisfied from the checking you did make and what they did made that they had perfectly valid 100 per cent good claims to the extent of $1900 for their part? A. There were some claims there for moneys loaned.

Q. To the extent of $1900 or thereabouts? A. From what they told me, $1900.

Q. You were satisfied that those claims were good? A. I thought so.

Q. You say you advised this poor old lady that had such a time with the store, and was what, 80 years old? A. She was quite old. 746

Q. Or over? A. I don't think so.

Q. You advised the old lady to give up her claim against the estate of her son? A. I think she volunteered to do that.

Q. You didn't allow that, did you? A. I certainly did.

Q. Why shouldn't the old lady come in first, if anything? A. Because she wanted the creditors to get as much out of that estate as possible, and she figured that when Paul Hymowitz got out of jail, that he would try to go back into business, and if the creditors got more out of the estate that he would have a better standing in the market. 747

Q. When you say "creditors," she was such a creditor? A. She was not a merchandise creditor.

Q. No. But if she got 100 per cent, that you referred to in your letter to the creditors, she could help to put him back?

Mr. Walsh: No 100 per cent.

Q. As near as possible. I am coming to that. A. You will find, Mr. Corbin, that in the total of approximate liabilities set forth in that letter that went to all the creditors, that $1900 is not included.

48 Q. I know that. A. The intention on their part was to waive the $1900. On the other hand, if that $1900 was added to that $2500—

Q. Now if this claim for $1900 or thereabouts was so good, was so satisfying to you and valid and so backed up in part at least by bank books and bank withdrawals and documents, why did you let his family that had advanced that money say or even express a willingness to give it up? A. Because if I thought that if Paul Hymowitz got out of jail and wanted to reestablish himself in business and the creditors got more money out of that estate they would feel more kindly towards him and extend credit to
49 him.

Q. So you— A. I thought—

Mr. Walsh: Let him finish.

Mr. Corbin: All right. I thought he was finished.

Q. Go ahead. A. On the other hand, if the creditors received lesser amounts or smaller dividends they might feel differently towards Hymowitz and shut off all credit.

Q. And Hymowitz in jail. Yes. Hymowitz at that time was in jail.

Q. So you wanted his poor old mother to pay, in effect
50 to pay the creditors to the extent of $1900? A. I didn't ask her to do that, Mr. Corbin.

Mr. Walsh: I object to that question.

The Court: I will overrule the objection.

Q. All right. You say now they were willing to give it up: right? A. Yes.

Q. Did you get a paper signed by them that they were willing to give it up? A. I got such a paper.

Q. Not for months, did you? A. I have it here. I can tell you—

Q. Not for months after March? A. The paper would 751
state the date when it was signed.

Q. I say it wasn't for months afterwards? A. It may have been months later at Schulman's request, at some time later.

Q. Certainly. A. I think the papers will tell you just what the date is.

Q. And from the very beginning, even at that creditors' meeting on March 25th they wanted to make sure that these relatives would not make the claims that you said they would not make, didn't they? A. I told them at that meeting—

Q. Can you answer that yes or no? A. You are talking 752
about the March 25th meeting?

Q. Yes. A. At the Dry Goods?

Q. Yes. A. Now what is your question?

Q. The creditors wanted to make sure that those family claims would not be presented, didn't they? A. They mentioned that when I told them that in the event there was a petition in bankruptcy those claims would be asserted and not waived, but if this thing was settled if this thing was permitted to be properly administered those claims would be waived.

Q. Well, there was a petition filed in bankruptcy, wasn't 753
there? A. Not at that time.

Q. No, but later. A. Yes.

Q. And did you file these claims for the family? A. There were no claims filed. I don't believe any others filed claims because I think it was dismissed shortly after it was filed.

Q. The fact is, is it not, that there never were any family claims at all? A. I think I have a receipt in my file from Paul Hymowitz in which he took back from me one of the bank books which showed the withdrawal of moneys. I think either Flo Hymowitz or by his mother, and I under-

754 stood from them that that withdrawal went into the store and was part of the $1900 claimed.

Q. You say they told you that? A. Yes, sir.

Q. Well, did you ever notice that any moneys went from Hymowitz to his mother? A. There may have been exchanges, is that what you mean, Mr. Corbin?

Q. Yes. A. There may have been a certain transaction that I don't know about.

Q. And didn't you realize that it was your duty as attorney for the assignee to inquire into any claims that Hymowitz might have against any members of his family for loans or advances to them? A. That may not have been
755 necessary where they were willing to waive their claims, Mr. Corbin.

Q. Yes, but as counsel for an assignee for the benefit of the creditors it is your duty, generally speaking now, to collect every asset that is possible? A. That is absolutely correct.

Q. Including any claims that may be made against the family, of course, or against anyone else? A. To collect claims from any source.

Q. Right. Now you weren't in any position to try to collect claims if there were any from the family, were you?
756 A. Why wasn't I?

Q. Why, the family had retained you, and the man that made the assignment had retained you, and you had prepared the assignment in his presence and had him sign it and you had the assignee in your office. A. There wasn't any possibility that any such moneys that they paid back would have exceeded $1900.

Q. Didn't you feel very uncomfortable in the position you occupied? A. I didn't feel too happy about it, Mr. Corbin.

Q. No. But you knew you couldn't carry water on both

shoulders representing that outfit and the creditors, too, 757
didn't you?

Mr. Walsh: I object to that characterization.

The Court: Yes. I sustain the objection.

I believe, gentlemen, this is a very good place to take a recess. We will adjourn court until ten-thirty tomorrow morning.

(Adjourned to Thursday, July 18, 1940, at 10:30 a. m.)

UNITED STATES OF AMERICA

—against— 758

MORTON GOLDMAN, et al.

New York, July 18, 1940.
10:30 A. M.

TRIAL RESUMED.

ROBERT HOFFMAN, resumed the stand.

Cross examination continued by Mr. Corbin:

Q. When we adjourned last night we were talking of the 759
uncomfortable position that you were in representing both the bankrupt and his creditors. Do you remember that?

Mr. Schachner: I object to that.

The Court: Objection sustained.

Q. Did you tell us last night you didn't feel very happy about the position you were in, in that regard? A. I say it may have been, or it might become an embarrassing position.

Q. You said you were not very happy about it when I

760 asked you if you felt comfortable, didn't you? A. I don't remember the exact words, Mr. Corbin.

Q. Well, that in substance? A. In substance just as I told you.

Q. Not as I just said? A. I don't think so.

Q. Just before recess last night I asked you this question.

"Q. Didn't you feel very uncomfortable in the position that you occupied?" And you answered: "I didn't feel too happy about it."

Now is it not a fact— A. That was your question and that was my answer.

761 Q. And these creditors and lawyers for the creditors suggested that they should have, the creditors, should have joint control, that didn't strike you at the time as improper, an improper request in any regard, did it? A. At that time it didn't seem improper, but it seemed very unnecessary.

Q. It seemed to you unnecessary? A. Yes, sir.

Q. That is, you felt you could represent the debtor Hymowitz, and his family and relatives, and also the assignee and the general creditors without any unhappiness about it at all, is that right?

Mr. Schackner: I object. Counsel has suggested
762 that Mr. Hoffman represented the debtor.

Mr. Corbin: I could not hear that.

The Court: I will overrule the objection. He knows whom he represented. I think the question is proper.

A. Well, I felt this way, Mr. Corbin—

Q. Did you feel that way? A. Not the way you put it.

Q. You thought you could represent everybody, and no other lawyer and no other creditor should have anything to say about that estate at all; is that what you felt? A. That is not true.

Q. And when they asked you to give them joint control, just have another assignee with your office man there, and they another lawyer in with you, who represented the debtor, Hymowitz, you knew that was a proper request under the law, didn't you, as a lawyer? A. I said before the request may have been proper but it was not necessary under the circumstances because, as I stated before, I offered to give them every opportunity to investigate every fact in that case at that time. 763

Mr. Schachner: Your Honor, I object to the question.

The Court: Objection overruled. 764

Q. Tell me, you knew it was a perfectly proper request? A. Proper request it was.

Q. But you didn't like it? A. No, I thought it was wholly unnecessary. Wait until I get through, gentlemen—

The Court: Just a moment.

Mr. Corbin: He has answered the question, your Honor.

The Court: No, he didn't complete his answer. Let him answer the question, and as long as it is responsive to your question, I will allow it but if it becomes irresponsive I will not. 765

Mr. Corbin: He has answered it categorically.

The Court: He is trying to make an explanation. Go ahead.

A. (Continued) I told Mr. Kandell and Theodore Goldman it was wholly unnecessary because I saw no complications there. Further, that there was a small estate involved and still further, they might have access to any information they might desire. I told them they could examine any of the debtor's papers or books or records, which the assignee had or the debtor might furnish.

766 Mr. Corbin: I move to strike out the answer as not responsive in the slightest degree.

The Court: Motion overruled.

Mr. Corbin: Exception.

Q. If there were a co-assignee and a co-attorney appointed, that would not increase the expenses of the estate at all, would it? A. I don't think it would, Mr. Corbin. It might and it might not.

Q. Whatever the attorney was allowed would have to be divided between two attorneys, and what were the statutory commissions would have to be divided among the two, under
767 the law? You knew that, didn't you? A. Now you have two or three questions there. Please let me answer one at a time. Now which one do you want me to answer first?

Q. You ran the "show"? A. You are running it now.

The Court: Proceed and ask another question. He has given a categorical answer. I am going to let you proceed and ask him another question.

Q. If there were two lawyers in the case they would have to divide their fees, and if there were two assignees they would have to divide their commissions, is that right?
768 A. Not necessarily.

Q. All right. I will take that answer. A. Do you want me to explain that?

Q. Do you want to explain? A. Yes, sir.

Q. Well, go ahead. A. All right. Insofar as the assignees are concerned, the statute permits a certain percentage. That would have to be divided between the co-assignees, and so far as the attorneys are concerned, the Court fixes the fee of the attorney. The Court may or may not fix a greater fee where there are two attorneys representing the assignee. It may fix a lower fee where there is only one assignee. That is a possibility.

Q. Why you didn't want them in was that it would cut 769
down, we will say, it would probably cut down what you and your office employee Kolman, would ultimately get out of it in money, isn't that the reason? A. The answer to that is if there were co-attorneys I would get less, they would get part of the fee; right. I say this: If there were a co-attorney and the co-attorney got part of the fee, of necessity I would get a lesser amount.

Q. Then your answer is yes? A. Yes, sir—to what?

Q. To my question. A. What is your question?

(Question read.)

Q. Did you hear the question? A. Which one? 770

Q. You are getting very smart this morning, aren't you? A. Mr. Corbin, I am not as smart as you and I never hope to be as smart as you.

Mr. Corbin: May I have the question read?

(Record read.)

Q. All right. Did you represent the debtor throughout this whole matter? A. I did not.

Q. Never represented him? A. In what?

Q. In connection with the Hymowitz insolvency, the assignment and all the proceedings. A. Why, there is one 771
paper there that was given to Mr. Schulman in which I stated that I was going to represent the debtor but solely for the purpose of having the petition in bankruptcy dismissed.

Q. Tell me, did you represent Hymowitz all the time from the day that the assignment was made down to the time when the proceedings were closed? A. To the extent that I signed that affidavit in the motion to dismiss the petition in bankruptcy which affidavit was prepared by the firm of Goldman, Malter & Goldman.

772 Q. You told us yesterday that you did not represent Hymowitz, didn't you? A. I did not.

Q. And you heard Mr. Schachner here this morning make an objection upon the ground that you did not represent Hymowitz, didn't you? A. Possibly he objected to the form of your question.

Q. And the fact is that you did represent Hymowitz at all times? A. To that extent.

Q. Outside of any paper, record, the fact is that you knew that you were there to take care of Hymowitz. That was your object, wasn't it? A. Why, there wasn't anything that Hymowitz had to be taken care about, as far as I
773 could see in that case.

Q. And you represented him, didn't you? A. In this case?

Q. Not this criminal case. A. In this insolvency case?

Q. All the way through. A. To the extent that I told you, Mr. Corbin.

Q. Just on the application of the bankruptcy motion? A. That is correct.

Q. Did he pay you for that? A. He did not.

Q. How much did you pay Kolman? How much salary? A. $15 a week.

774 Q. You had a case where you filed a petition in bankruptcy against the debtor after he, the debtor, had made an assignment and filed it upon the ground that the assignee had formerly represented the debtor, didn't you? A. Which matter are you referring to, Mr. Corbin?

Q. I am referring to any matter. Did you ever have such a case? A. I don't recall.

Q. On April 26 you gave a receipt, signing it under that date, April 26, 1937. I show you a copy. Do you recall that (handing witness)? A. Do you say that this is an exact copy?

Q. Just answer my question.

Mr. Corbin: May I have an answer to the question, Judge? 775

The Court: He is asking you if you recall whether that is a copy or not. Do you or do you not?

The Witness: I can't tell unless I see the original, Judge.

The Court: Very well.

Mr. Schachner: Mr. Corbin, please identify it. What is it?

Mr. Corbin: It is a receipt in the assignment proceedings assigned by him.

Mr. Walsh: If you say that is a correct copy, that is all that is necessary. 776

Mr. Corbin: Well, I can't say it.

Mr. Walsh: From what exhibit is it?

Mr. Mintzer: Exhibit 14, Mr. Walsh.

Mr. Schachner: It is Exhibit 10 (handing to Mr. Corbin).

Q. I see in the original that you wrote something in, or I will ask you: Is that handwriting of yours in that receipt (handing witness)? Was that yours or not? Do you see that part that is in there in longhand over the typewriting? A. This is either in my handwriting or in Mr. Schulman's handwriting. Now there is a copy of this 777 that Mr. Schulman has.

Q. I didn't ask you where any copy was. I haven't said a word about Schulman. Can't you identify your own handwriting?

Mr. Schachner: Your Honor, I would like at this time to object against the use of Exhibit 10 for this purpose. Exhibit 10 is a copy of an original, the original of which is in defendants' possession. Now the handwriting appearing on that cannot properly be probative of anything since it was merely a copy

778 for Mr. Hoffman's personal use. I don't see the relevancy of whether it is Mr. Hoffman's or Mr. Schulman's handwriting.

The Court: Well, I will overrule the objection. The question is whether or not that is his handwriting. If he knows, why, he can state. If he does not know, he can so state. I will overrule the objection.

The Witness: Judge, the only reason I can't tell at this time is a heavier ink and a heavier handwriting where my signature is, and that is in a lighter line, and smaller handwriting, and I can't state at
779 this time definitely whether that is mine because Mr. Schulman's signature is right above and that is in lighter ink and I can't tell now whether it is his handwriting or mine, but I do know—recollect that the same thing was put in another copy which was given to Mr. Schulman, which is over my signature.

Q. Then you don't know your own handwriting? A. I don't say that, Mr. Corbin. That is my signature there.

Q. Well, will you read to the jury what that says, whether it is your handwriting or somebody else's; you can read it, can't you? A. "As attorney for Paul Hymowitz in the
780 foregoing proposed bulk sale and settlement, I hereby authorize the said Jacob P. Schulman to make distribution of the funds mentioned in the foregoing instrument on the terms herein set forth."

Q. That is what you signed, isn't it? A. That is my signature.

Q. And were you attorney for Paul Hymowitz in the "Proposed foregoing bill of sale and settlement"? A. Well, in connection with the dismissal—

Q. Just yes or no. A. —of the petition in bankruptcy.

Q. You told us that but you said you weren't his at

torney in any other regard. Now here is one where you signed yourself as attorney for him in the "proposed foregoing bill of sale and settlement." A. Well, Mr. Corbin, if you want to know— 781

Q. Were you attorney for him in that matter? A. Are you through with that question?

Q. Were you attorney for him in that matter? I want to know yes or no. A. Under instructions of the Federal Bureau of Investigation on the 26th day of April, 1937—

Q. I haven't asked you anything about the Federal Bureau of Investigation.

The Court: Just a minute, gentlemen. The question is: Were you attorney for him at that time in that matter or not? Were you or not? 782

The Witness: Actually not.

Q. So that is a lie over your signature, is it? A. It is not.

Q. All right. Here is something else, Mr. Witness: A letter dated April 26, 1937, apparently signed by you. I ask you, did you sign that paper (handing witness). A. I did.

Q. Do you see some handwriting insertion in the body of it? A. You mean that part where it says, "In connection with the proposed sale and settlement"? 783

Q. Yes. That is what the handwriting says? A. Yes, sir.

Q. Is that in your handwriting? A. I would say it was.

Q. Well, let me read this to you and to his Honor and the jury: "In my behalf as attorney for the assignee and as attorney for Paul Hymowitz in connection with proposed sale and settlement I hereby authorize," and so forth.

In view of that do you say that you weren't representing, as attorney for Paul Hymowitz, in the assignment proceeding? A. Only for the particular purpose of having the

784 petition in bankruptcy dismissed and carrying out the scheme of the defendants.

Q. Were you representing Hymowitz in the proceeding? A. Only to the extent that I just testified.

Q. Were you representing him in connection—to use the words that you read then—in connection with the proposed sale and settlement?. A. Yes, and part of that would be the dismissal of the petition in bankruptcy.

Mr. Schaumner: For the record please state what exhibit you were reading from.

Mr. Corbin: This exhibit is 2-C that I read from.

785

Q. You went over to the store of Hymowitz on the Bowery, didn't you? A. I did.

Q. When were you first there? A. I should say several days before the 24th of March. It might have been a day or two before the 22nd of March, around that time, Mr. Corbin. Before the 24th of March.

Q. Was it before you got the assignment executed? A. It's very likely that I went there possibly the day before. That's possible.

Q. Was there anyone there when you were present? A. I think—yes. I think there were the following: Paul's

786 mother, I think his wife was there; possibly some other person.

Q. Was Sam Rich there? A. Sam who?

Q. Rich—R-i-c-h. A. I don't recall that name, Rich.

Q. You don't know Mrs. Hymowitz's brother? A. You say Paul's wife's brother? I may have met him, and if I did, I may have met him about once or twice. I can't recall the name.

Q. You know Sam Rich, don't you, Mrs. Hymowitz's brother? A. Now in what respect? Do you mean whether I met him or—

Q. Certainly you knew the name when I mentioned it, didn't you? A. I did not.

Q. He was over there at the store on the Bowery the night that you came over before the 24th of March? A. That's possible. 787

Q. You know that, don't you? A. I say he may have been there.

Q. And what was he doing? A. What do you mean?

Q. I mean just what I asked. A. What do you mean, "What was he doing"?

Q. What was he doing in the store when you got there? A. He was in the store.

Q. All right; what doing? A. I don't recollect what he was doing.

Q. Charles Rich, his brother, was there also, was he not, on that occasion? A. I couldn't say. 788

Q. And they were taking an inventory of the stock, were they not? A. They may have been looking the stock over, yes.

Q. They had the bills out, both the unpaid bills and the paid bills and had been working there as you were informed when you got there around five o'clock in the afternoon, that they had been working there all day on that job, making an inventory and finding out where the stock stood and where the debts stood? A. They may have been doing that, Mr. Corbin.

Q. You were told that, weren't you, when you got there? 789
A. It's possible I was told that.

Q. That was the initial meeting, wasn't it, with you on this matter? A. No, no. There was one meeting before that, I told you, when I was consulted.

Q. That was the first time in the store at any rate? A. Yes.

Q. And you stayed around there a couple of hours while and until they finished their work and added up the figures from the bills and the checking of the stock; that is right, isn't it? A. I may have been around there a couple of hours.

790 Q. And—A And that may have been in connection with the visit that I made to Paul Hymowitz either the following day or two days after that, and that may have been to bring Paul Hymowitz certain records so that might refresh his recollection in connection with finding out what the assets and liabilities might have been.

Q. I will be satisfied if I refresh your recollection. A. I will be glad if you will.

Q. And they were taking the inventory and recording the figures on cardboards, the bottoms of shirt boxes with the sides knocked off; do you recall that? A. No.

791 Q. And they finally completed it while you were there; you remember that, don't you? A. I don't remember whether they completed it.

Q. And they wound up the job and they closed up the store and you all walked off together; don't you remember that? A. I know I left the place.

Q. Don't you remember that, the first time you were at the store at all? A. Remember what?

Q. That the job was completed while you were there and you all left together. A. Which job?

Q. The job of making the inventory and taking the figures from the bills showing the cost of the stock and the amount on hand. A. I told you I don't recollect that phase of it.

792 Mr. Schachner: Your Honor—

Q. Well, what were they doing in the store—

Mr. Corbin: Oh.

Mr. Schachner: Oh, your Honor, I meant to object to this line of questioning since the witness has testified that he does not recall.

The Court: I will overrule the objection.

The Witness: What was the question?

(Question read.)

Q. What were you doing there for a couple of hours? A. 793
Why, I may have told them to get the bills together and any correspondence they might have there so that when I go up to see Mr. Hymowitz I could take those records along and have him check those back because he had been sent to jail so fast that he had no opportunity to do anything about his business, and I thought he was—

Q. You think you may have told them to get the bills together? A. I think that is what I did tell them.

Q. I know, but that wouldn't take more than a couple of seconds. What were you spending two hours of time there doing? A. In the first place, I don't know whether I was there two hours, Mr. Corbin. 794

Q. We have gotten past that. You were there around five o'clock until seven o'clock that afternoon, weren't you? A. I don't know whether I got down there five o'clock that afternoon. I may have gotten down there later.

Q. All right. You were there some time and you were there winding up all the work that those men had been doing all day long, as you were then informed, of taking careful inventory of the stock; isn't that substantially correct? A. Maybe. I can't answer that.

Q. You can't deny that? A. Well, I won't deny it.

Q. All right. A. That may have been.

Q. What was the final figure that they reached when the job was done? A. Who reached? 795

Q. Sam Rich and Charley Rich and you. A. I don't know if there was a Charley Rich there and—

Q. All right; Sam Rich? A. I don't think I would even recognize him if he were here in court today, Mr. Corbin.

Q. You think that is going to answer my question? A. Well, you asked me what those people did. I don't recollect what they did.

Q. I asked you what the figure was. A. I don't remember any figure, whether or not there was even a figure submitted to me at that time.

796 Mr. Schachner: Your Honor, I would like to object to this line of questioning. It is manifestly unfair to ask the witness whether or not a figure had been arrived at if he doesn't even recall whether anybody was there to arrive at a figure.

The Court: Well, I will overrule the objection. He is on cross examination. Of course if he doesn't remember he may state that he doesn't remember, but the counsel has a right to see if he can refresh his memory about any of those things, so I will overrule the objection.

797 Q. Didn't you question Mr. Sam Rich as to the value of the stock on that occasion? Answer me that first. A. The only reason—I don't recollect, Mr. Corbin. The only reason I may have asked him, if I did, that would be only on the basis if he knew anything about the value of the stock or of the store; if he did and if he knew anything about it I may have asked him a question as to value. Otherwise I don't think I would ask him any question as to value.

Q. Well, you knew that Sam Rich had had more than 20 years of experience in the men's furnishings field and was fully aware of values of such merchandise, didn't you? A. I don't recollect that, Mr. Corbin.

798 Q. Didn't you know or weren't you informed either then or as a matter of discussion among the relatives at which you were present there, that Rich had bought and sold hundreds of such stocks of merchandise in bulk and otherwise over a period of over 20 years? A. I don't recollect that.

Q. And didn't you know when you got there, at least whether you knew before or not, that Sam Rich was there to inventory that stock and appraise and value it? A. I say that is possible, that there may have been somebody there other than Paul's mother and wife.

Q. Don't you know that he was there to appraise the stock and value it? A. To appraise it and value it? No. 799

Q. And to inventory it? A. I said to collect bills and records and whatever papers there were, that I might need to take up to Hymowitz so that Hymowitz could refresh his recollection, because Hymowitz was the one who would really know what the situation was.

Q. Is this true, that a detailed and itemized inventory was taken and that the prices were taken from the bills on that occasion? A. At that time?

Q. Yes. A. I don't think it is so, Mr. Corbin, because I know the auctioneer took several days to find out what that was all about, and he had several men working there, 800 and they are quite experienced on this thing.

Q. Is this true, that Sam Rich wrote down the items and the prices and later extended and totaled them and that the grand total was about $1800 at cost? A. That I don't recollect, Mr. Corbin.

Q. You won't deny that, will you? A. I don't know what he might have said, if he did say anything that you say there. I wouldn't recollect that.

Q. You mean you don't recall it now? A. I don't recall it now.

Q. You won't say that it didn't occur? A. I couldn't say that either. 801

Q. Did they work on that inventory until about seven o'clock? A. Are you through with that question, Mr. Corbin?

Q. Yes. A. I couldn't tell you what time it was.

Q. And did Robert Hoffman, did you, at about that hour, question Mr. Sam Rich as to the value of the stock and as to what he would pay for it? A. I don't remember asking anybody there as to what they would pay for any of the stock in that store.

Q. Did you ask Sam Rich what he regarded the true value of that stock to be? A. I don't think I did.

802 Q. You were interested in knowing that? A. If he were in that business, I don't know whether he was in the business that you tell me he was in, if he were in that business and I knew that fact, I may have asked what the value of the stock was. I would be interested in knowing what the approximate assets were.

Q. And Sam Rich then and there showed you that the total of these figures of the inventory, the cost of those goods was about $1800 at cost, and he further told you that he would pay between eleven and twelve hundred dollars for the stock and fixtures, because that was all it was worth. He told you that? A. I don't think he did.

803 Q. Will you deny that he said that to you? A. I would.

Q. You will? A. I mean my best recollection is that he did not.

Q. Will you deny that he said that in words or substance? A. I tell you my best recollection is no such statement was ever made at that time or at any other time.

Q. That is your best recollection; but are you positive about it? A. That is the best answer I can give.

Q. So you won't deny that occurred? A. I say that is my best recollection.

Q. Then that is your best answer? A. That is my best answer.

804 Q. Now Sam Rich on that occasion said that a good part of that stock was winter stock and was worth considerably less at that time of the year, and then again some of the stock was shopworn. A. I think Mrs. Hymowitz knew something about that and if there were any questions to ask I would have addressed them to her.

Q. Not to Sam Rich? A. If he were there, and he was there, that was the first time I met him.

Q. Did you tell him that? A. I don't think I did.

Q. In words or substance? A. I don't think I did.

Q. Did he tell you that in words or substance? A. What?

Q. That it was winter stock and shopworn? A. There 805
may have been remarks passed there.

Q. By him? A. Whether by him or Mrs. Hymowitz.

Q. And that the stock was worth on sale $1200? A. I don't think any statement of that kind was made there.

Q. Were you then given the keys to the store? A. I don't think any keys were given to me until after the assignment was executed.

Q. And when you all departed from the store that evening, you also took with you the inventory and said that you would advise Sam Rich of your position as to what you were going to do about the matter, isn't that true? A. I never
did. 806

Q. What is that? A. I never did, because I had no business with Sam Rich at any time.

Q. Did you take the inventory with you? A. I may have taken records with me, that is, bills and other correspondence.

Q. The inventory I said, the inventory? A. I don't think I did.

Q. What happened to that? A. Don't ask me, I don't know.

Q. Well, you were there? A. I don't know whether there was an inventory made.

Q. You mean to say sitting there, Mr. Hoffman, that that 807
night you went down there you got the inventory, and they had been working on it all day and finished it while you were there? A. I answered that. I say I took no inventory that was prepared by Mr. Rich along with me.

Q. What inventory prepared by whom did you take with you? A. I don't recollect taking a copy of any inventory with me at that time.

Q. Will you say you didn't? A. That is my best recollection.

Q. That is as strong as you dare to put that? A. Not as strong as I dare to put anything.

808 Q. Now what were the papers that you did take with you? A. My best recollection is that I took with me bills, correspondence, records; I cannot tell you exactly what. I think there was a box that had a lot of bills and records in there; I think I took them.

Q. There were two files, one a file of unpaid and another of paid bills. A. It may be.

Q. And that is all the books and records Hymowitz kept? A. He kept no regular set of books, that is a fact.

Q. And from that you all made up your minds and came to a final conclusion as to what the stock was worth that night; didn't you? A. The answer is "No."

809 Q. And the fact is you all agreed that the cost value was around $1800 and the real value or sale value was around $1100 or $1200, isn't that right? A. No.

Q. Now did you figure up what the bills were? A. What?

Q. The unpaid bills? A. When?

Mr. Schachner: Will you offer the paper you have been reading from for identification.

Mr. Corbin: I will offer in evidence the paper I have been reading from.

Mr. Walsh: All you could do is to have it marked for identification. You know that.

810 Mr. Corbin: Is there any objection?

Mr. Schachner: No objection to having it marked for identification.

Mr. Corbin: I have offered it in evidence.

Mr. Schachner: I object to its admission in evidence.

The Court: Objection sustained. Mark it for identification.

(Marked Defendants' Exhibit A for identification.)

Q. Did you figure up the bills to find out how much Hymowitz owed? A. When was this?

Q. Before the 24th of March? A. I don't think so—oh, yes, it may have been at the time I visited him at Riker's Island, he may have figured them up for me or with me, that is most likely. 811

Q. Did you take them home with you that night you got the assignment? A. I think I did.

Q. Did you figure up the bills? A. At that time?

Q. At some time prior to March 24th? A. I would say that the bills or the approximate liabilities were figured up at that time.

Q. And did you find that they totaled something over $2500? A. Approximately $2500.

Q. Approximately $2700 something over $2500? A. Around that figure. 812

Q. And then there was a claim of the City for $1000 that you knew was in the offing? A. No, sir, the first time we knew about any City claim was after Goldman, Malter & Goldman were retained as co-attorneys. As a matter of fact, the notices were served on them and I think they called it to my attention, if I am not mistaken.

Q. The creditors, outside of the family, their claims were around $2500? A. Around that figure.

Q. Did you on the other side figure up the cost of the stock? A. I think Hymowitz put a figure of between $2200 to $2500 on it. 813

Q. At cost? A. At cost, something around that figure.

Q. Now was it true that it was not seasonable to sell that stock at that time and that they had some difficulty in running the store for that reason? A. I don't know—you mean with respect to Hymowitz's business prior to the 24th of March?

Q. It was not a good time to sell the stock, was it? A. You mean any occasion or you mean in March of 1937?

Q. Yes, if was not a good time of the year to sell it? A. You mean in March, 1937?

814 Q. Yes. I am talking about March, 1937. A. Well, I could not say. I didn't know much about it.

Q. You didn't say anything about that in your letter to the creditors? A. As to what?

Q. About the seasonable character. A. I may have stated something in my letter with respect to the seasonableness of the stock, as one of the reasons, perhaps why Hymowitz was in such a position, that I may have stated it. There may have been mention made in the letter about seasonableness.

Q. That was a ten-year old stock on the Bowery? A. What do you mean?

815 Q. They had been running the store for ten years? A. They had been running a store for twenty years, that kind of business.

Q. There was stuff in there that was as much as ten years old? A. Not to that extent.

Q. You were not told that? A. Not that it was ten years old.

Q. Did you ever have any experience at all personally with this kind of stuff? A. You mean buying and selling?

Q. Yes. A. No.

Q. At least you were told and understood at the time that whereas the stock might have a cost value, as you
816 stated in your letter, of around $2500— A. (Interrupting) About $2500, $2200 or $2700, around that figure.

Q. That it would not bring half that on the sale? A. That is not so.

Q. From 40 to 60 percent, tops? A. You mean told that by anybody?

Q. Yes. A. I was told by Mr. Dunn that it was worth around $2000 on a sale, and Mr. Wishbow said it was worth around $1800 on a sale; I was told that.

Q. And you believed it? A. I had no reason to disbelieve it.

Q. Is it not the fact that you didn't think that stock would bring more than $1100 or $1200? A. At which time do you mean, in March, still in March? Which part of it? You mean the 24th of March, prior or after? 817

Q. Well, never mind. You had no idea that the creditors were going to get any hundred percent for their claims on this estate, did you, at any time? A. Not to the extent of 100 percent, no.

Q. You had no idea that the estate would amount to on a forced sale that you were noticing to more than $1500, did you? A. Well, I thought the stock would realize about between $1800 and $2000.

Q. Suppose we say $2000. You knew the expenses would run high before the creditors got anything, didn't you, in assignment proceedings? A. Well, the usual expenses. 818

Q. Your auctioneer, those expenses ran to around $300, with helpers? A. Well, there was a reason why it ran to $300. Do you want the reason for that? That is not a usual expense.

Mr. Schachner: I respectfully suggest that the witness be allowed to explain.

The Court: He can answer.

Q. Is there something you want to say? A. I thought you might want to know— 819

The Court: Well, Mr. Schachner, you can take him on redirect when the time comes.

A. (continuing) There were fees for the assignee that would total nearly a hundred, you had to think of that, that would be 5 percent, the statutory fees, that is the usual rate.

Q. And your fee, you figured on getting three or four hundred dollars out of it? A. I absolutely didn't. The Court allowed $300.

820 Q. You got it? A. You mean I eventually got it?

Q. Yes. A. Yes, sir.

Q. You got it and didn't split with anybody, did you? A. I did not.

Q. And you knew in March of 1937 that the sales tax and business tax had to be paid? A. I tell you I didn't know anything about that thousand dollar claim.

Q. There was rent to be paid, wasn't there? A. I am not sure whether the rent for March had been paid, I am not positive of that, but I do know there would not have been much rent to pay if that sale had been permitted to go on April 5th, because we got an order for the sale
821 on March 24th and consequently the sale on April 5th, and only paid to the extent of twenty-five——

Q. There would be a difference in fact between 75 and 50, that is the difference? A. There would have been a difference. In fact, the difference between twenty-five and $150, that is what the saving could have been.

Q. Well, at least you have got three, four, seven, around $800 to come off the expense, to come off the $1800 figure. A. Consisting of what?

Q. The auctioneer's fees and helpers, and I have not said anything about advertising expenses, etc., and put in your fees at what you got, $300, and your assignee fees
822 at about $100, and then you have got your rent, there was a bill of $60 for the cash register, that had to be paid. A. That was because the assignee sold the cash register and got more than $60 for it, I think, and paid the $60 to the company that had a conditional bill of sale on that cash register.

Q. And there was that sales tax that you say you didn't know about, $1000 to the City; you knew from talking with Mr. Hymowitz that matter had to be adjusted? A. I didn't. He said the sales tax had been practically paid up and that he did it by putting pennies in a box on each sale.

Q. There was about $300— A. (Interrupting) Paid to 823
the City by way of sales tax, yes, sir. I adjusted the claim of $1000 down to $300-odd.

Q. That all gets it down to around $700 that there was equity for the creditors. A. You will have to give me some papers here. Have you got the final accounting? If you have I will be able to follow you much better.

Mr. Corbin: Here is a chart of figures taken from the final accounting, Judge. I don't know whether I need to identify the figures by the witness but I will show them to you.

May I mark these in evidence. Let me show you 824
what it is. I am informed that every figure here comes from exhibits in evidence.

The Witness: Might I look at it for a moment. I think there is an error.

Mr. Walsh: Do you say it is correct, Mr. Corbin?

Mr. Corbin: It is said to be correct.

Mr. Walsh: Then we have no objection.

(Chart marked Defendants' Exhibit B.)

The Court: We will now take a five-minute recess.

(Short recess.)

Mr. Corbin: Mr. Schachner reminds me, ladies 825
and gentlemen of the jury, that the word "preferred" in this last exhibit B is misspelled. It has one "f" too many, so can we eliminate that in some way?

Mr. Schachner: No objection.

The Court: Very well, gentlemen. It is a typographical error. You may proceed.

Q. You told the creditors in that letter of March 24th that they were going to get as near 100 percent as possible. You mentioned 100 percent in the letter, didn't you? A. That is what the letter says.

826 Q. Well, with the figure $1800, if you will, for the value of the stock, although the petition that was prepared at your instance said that it was worth only $1500— A. What do you mean by "at my instance?"

Q. Well, do we have to go back to that? You said you did not prepare it yesterday— A. If you want to.

Q. You swore that you prepared it but you said yesterday that you didn't. A. I said what?

Q. Have I got to go back to that? A. If you want to, Mr. Corbin.

Q. I am still coming back to these figures. A. (No response.)

827 Q. In the petition put out in your cover and which you did not know where it was prepared, but it was referred to in your affidavit that I showed you yesterday, in which you said you prepared it—you remember that? A. Yes, sir, but I explained it to you yesterday.

Q. Maybe there was an explanation but, in any event, in this petition the statement is made that the entire assets "After investigation and after your petitioner has caused to be made an examination of the entire assets were $1500." A. Who signed that petition?

Mr. Corbin: Judge, can't I have an answer?

828 The Court: Well, he is entitled to see whether he signed it or not.

Q. Well, I did not say he signed it. It is Mr. Kolman's petition. He verified it, didn't he? A. Well, that is his signature and there is his verification.

Q. Yes. It was your product, wasn't it? A. What do you mean by "my product"?

Q. It came out of your office? A. That is my back on there.

Q. It came out of your office? A. And I appeared as attorney for the assignee.

Q. And you knew that it was going to be submitted to the Court to act upon? A. I knew that application was going to be submitted to the Court for an order for sale. 829

Q. You knew that the paper was going to be taken down to the Judge and that he was going to read it and act upon what it contained, didn't you? A. And I didn't see the contents of that particular petition before it went down to the Court.

Q. You mean to say that somebody in your office put something over on you? A. No. Mr. Kolman is an attorney.

Q. Well, the fact is that by a paper that came out of your office and was used in your own back, with the Court and upon which the Court made an order at the time, stating that $1500 was the fair value of the full entire stock, didn't it? A. If the paper states that, that is what is there. 830

Q. Well, you knew it, didn't you? A. I told you I didn't.

Q. This paper was verified on March 24th, the very day that you were handling this matter by getting out the letter to creditors; isn't that right? A. The 24th of March, that was the same day.

Q. In fact, the very day that you were retained? A. Yes.

Q. This paper was signed? A. Yes, sir.

Q. Do you want this jury to believe now from what you say that you did not know anything about a $1500 valuation? A. I want the jury to believe that I didn't prepare that, that Mr. Kolman prepared that, and that I didn't see it before it went down to court. 831

Q. Well, all right. It came back from court, didn't it, with the Judge's signature? A. I think the original remains in court. I think a copy is made of it, if I am not mistaken.

Q. It had the Judge's signature on it, didn't it? A. I say, I think the original remains on file and we got a copy of the original for our files.

Q. Then you knew from the copy what the original said.

832 didn't you? A. I may not have examined it after it came back.

Q. Oh, now listen! A. All I was interested—

Q. You knew that $1500 was the value put by your office on that stock at that time, didn't you? A. If the order said a bond of $1500 that would imply that that was the value or some value like that stated in the petition, for the fixing of the bond.

Q. Is it impossible for you to tell me whether you knew at or about the time of this petition and whether that Mr. Kolman, your client, had sworn that the value was $1500? A. Kolman was my associate. He was the assignee.

833 Q. He wasn't your client? A. Well, client in a technical sense, yes.

Q. Now will you answer my question? A. All I can tell you is this, that before it was filed I didn't see it. After the order was signed and a copy of it came back to the office, most likely I did see the order.

Q. How about the petition that was annexed to it? A. I may not have looked at the petition, Mr. Corbin.

Q. You think you are going to get away with that, do you? A. I am not trying to get away with anything, Mr. Corbin.

834 Q. Well, $1500 we can take on the basis of something that came out of your office and was acted upon by the Court, can't we? A. You can take what you want.

Q. Aren't you willing to stand by your own office papers? A. I am willing to stand by what the law is, and there was a bond fixed at $1500.

Q. And that was $1500. A. That is what the Court fixed and that is only provisional. It may be amended by a permanent bond in a larger amount. If those facts are shown to the Court the Court will direct the enlargement of the bond.

Q. No, but the fact is that it was never enlarged, was it?

A. If the record shows it was never enlarged then that bond was not enlarged. 835

Q. And the fact is that the amount of $1500 was fixed upon a statement that came out of your client's affidavit or petition? A. You have the paper there.

Q. Well, that is right, isn't it? A. That is what the paper says.

Q. Why are you so unwilling to answer directly my question? A. Well, you keep repeating it. I mean that as a fact. We had this here yesterday.

Q. I can't get a direct answer from you. $1500 we will take as the value. Out of that how much did you expect the expense would be? I am talking about March, 1937. 836
A. Well, I didn't figure any fifteen—

Mr. Schachner: I object.

The Witness: Excuse me.

Mr. Schachner: Your Honor, I object to this question. Mr. Corbin has no right to take the value of $1500 without some support in the record.

The Court: I will overrule your objection.

Q. Now I will just ask one question: how much did you estimate the expense would be? A. Well, let us see. I figured that the rent would be about—could I have a sheet of paper so I can follow through. 837

(Paper handed to the witness by Mr. Corbin.)

Mr. Schachner: Do you need this final account?

The Witness: If you have the final account that will help the situation.

Mr. Schachner: May the witness use it (handing to witness).

(Witness examines document.)

Q. Give us the items as you put them down. A. Rent.
Q. Rent; how much? A. I would figure about $50 tops.

838 Q. Well, what is the next item? A. I am figuring the auctioneer's expenses. The auctioneer's expense is approximately $125 for conducting the sale, plus the disbursements for advertising and labor.

Q. Well, how much were those additional expenses for labor? A. You mean as they appear in here or as finally figured?

Q. No, as you probably figured them.

The Court: The question was, what did you estimate the expenses to be in March, 1937?

Mr. Corbin: Yes.

839 The Witness: Well, that is what I am trying to figure approximately.

Q. What do you figure those to be about? A. Which?

Q. The additional expenses, auctioneer expense? A. Well, I am going into that now. I have no definite recollection now. I am trying to work back from this.

Q. All right, work it out. A. I figure auctioneer's expense, including advertising, at about $200.

Q. All right. What else? A. I figure assignee's expense about one hundred.

Q. Assignee, one hundred. A. Approximately one hundred. I figure the attorney's fees between $150 and $200.

840 Q. That means you? A. That means the attorney for the assignee, me.

Q. Could I put two hundred down here on my list? A. If you like it better you can put two hundred.

Q. It is fifty better than 150. All right. A. Let us see. That is approximately all, about 550.

Q. 550. Well, if I took your smaller figure of 150, your own figure, although you got twice that— A. I will take 200 if you want to; I don't care.

Q. No. If we take 150 and write that down, it is a

total of 500, isn't it, of expense? A. Approximately 5— 841
550.

Q. And 500 or 550 from 1500 leaves $1000. A. Where do you get your figure—I mean, why do you take 500 off of 1500?

Q. Well, I have your paper here. A. No, you haven't got my paper here. You figure—

The Court: Very well. Proceed with the question, Mr. Corbin.

Q. Now from that $1000 you had how much of bills to pay? A. Well, you had several hundred dollars more for 842
your relief outfit, Mr. Corbin.

Q. Well, they came to $200, didn't they? A. Well, at that time it figured around $300.

Q. Oh, I see. A. As a matter of fact, I think, the letter stated at that time that it looked like $450.

Q. I know what the letter said. A. Well, it said about $250 and then it said there was about another two hundred or so in dispute with the City.

Q. Well, I know. We will say about 300. That is the way you figured it at the time. A. No. I figured it about four or 450. Is that what the letter says?

Q. Your letter is claiming something different from what 843
the fact was and what you believed. You in your own mind figured about $300 for the relief tickets as an outside figure. A. You are asking me now what I thought about this matter on March 24th?

Q. That is right. A. Now, I sent that letter out at the time and you have that present.

Q. I am going to take that letter up with you, but I am getting the figures first. Now $300, if you add that to the $1000, makes $1300. A. I think you could add 450 there, Mr. Corbin.

Q. Well, if you add 450— A. Instead of 300.

844 Q. If you add 450, although you only got 200— A. That is true. The City resisted the claim for about 200 or 250.

Q. If you make it $1450, that is tops, isn't it, and then— A. No, no, it isn't tops, Mr. Corbin. Let me answer that question.

Q. And then you have $1450 to pay $2700— A. Do you want me to answer the first question?

Q. No. You had creditors' bills of $27[illegible], didn't you? A. Is that what the account says?

Q. That is right. A. And is that what the letter says?

Q. The letter says "Approximately $2500." A. Well, that was the basis that I figured at that time.

845 Q. All right. $1400 to pay $2500. A. Oh, no, it wasn't $1400 at that time. That was figured—

Q. What is that? A. We didn't figure $1400 at that time.

Q. Listen. You were talking to the creditors in that letter about 100 percent. A. I said as close to 100 percent.

Q. How much did they get, what percent? A. Eventually?

Q. Yes. A. About—between 16 and 17 percent.

Q. Yes, and you ran the show, didn't you? A. Oh, no.

Q. Through your assignment proceeding. A. Oh, no, I

846 didn't run the show. The defendants ran the show with me.

Q. And the FBI. A. That is absolutely correct.

Q. And you sold the stuff out and collected—the auctioneer sold the stuff out and you collected everything— A. The assignee collected what was supposed to be paid.

Q. All right, your client, the assignee collected it and when you got through you had 17 percent for the creditors, whereas these lawyers had been talking to you and the creditors had been talking to you on March 25 about a 40 percent net to the creditors by way of a settlement, hadn't they? A. Why, if they hadn't stuck their

face in the picture you wouldn't have had a small figure like that. 847

Q. If they hadn't stuck their face in the picture you wouldn't have had 17 percent for the creditors and you know it, don't you? A. Of course I don't.

Q. And that is the result of your assignment proceeding, isn't it? A. That is the result of their actions.

Q. Although on March 25 you told the creditors in that letter that you were going to give them pretty close to 100 percent. A. Whatever that letter says I felt at that time.

Q. And you knew when you wrote the letter that there wasn't a Chinaman's chance of getting anything like that, was there? A. There was no Chinaman's chance of getting 100 percent. 848

Q. And the reason that you mentioned 100 percent in the letter was so that the creditors would say, "Well, here is an estate of $3000 or more of value." You said that in that letter, you mentioned $3000, do you remember? A. Well, is that what the letter says?

Q. $2500— A. How much?

Mr. Schachner: Why don't you quote from it?

Q. You mention in that letter from $2700 to $3000 of assets, don't you? 849

Mr. Schachner: Your Honor, I object to this question. If Mr. Corbin wants to quote from the letter let him do so, but he cannot substitute anything—

The Court: I sustain the objection. He is entitled to see the letter.

Q. I will read from Exhibit 5-A:

"Accordingly then the assets would appear to be about $2700 to $3000."

850 You wrote that, didn't you? A. At that time it appeared to be to me.

Q. Yes, "And the liabilities approximate about $2500." A. That is what they appeared to me at that time.

Q. And that was the picture you were giving the creditors? A. That is the picture I had at that time.

Q. Although you knew at that time that they didn't have a chance of getting anywhere near 100 percent, didn't you? A. No, I said that there wasn't any chance that they would get 100 percent.

Q. Although you were— , A. I tried to get them every cent that was in the estate.

851 Q. And you were doing that in order that they wouldn't interfere with your little show of administering the estate through the assignment? A. That isn't so, Mr. Corbin, because I asked cooperation of Goldman's office and Schulman's office, to examine into the records and help as counsel as they wanted, and if they had any suggestions I would be glad to follow them out.

Q. You wanted these lawyers to help you, didn't you? A. No, to cooperate.

Q. But not to participate? A. In what?

Q. Cash; fees. A. There was no necessity.

852 Q. You wanted their help but you wanted to keep the money for yourself, is that it? A. No. They represented creditors and they were being paid by their creditors, I assumed, if they did represent creditors.

Q. Now you testified before in connection with this matter, haven't you? A. What do you mean? In court?

Q. Yes. You were before the grand jury, weren't you? A. Oh, yes, sir.

Q. When? A. The early part of this year.

Q. And before that? A. About a year or so ago—two years ago. I don't know.

Q. At that time the matter was in charge of a Mr.

Spector, not Mr. Schachner; a Mr. Spector who was the assistant? A. Mr. Spector, I understand, was first in charge of that case. 853

Q. That was in 1938, wasn't it? A. I think that is correct.

Q. And that is when you testified before the first grand jury? A. That is the first time I testified before the grand jury.

Q. Yes, and then in this present year, in 1940 you testified before another grand jury, didn't you? A. That is correct.

Q. And that was Mr. Schachner, when he came into the matter? A. That is correct. 854

Q. Well, after April—let us see: the hearing before Judge Coxe was what, April 5th or 5th? A. I think it was the 5th.

Q. The 5th. Did you when you were before Judge Coxe in the Federal Court here tell him anything about what you told his jury, about what you say Morton Goldman told you on the 25th of March? A. I did.

Q. You did? A. I absolutely did.

Q. And he told you to go out and settle it up?

Mr. Schachner: Your Honor, I object to this question because the question before Judge Coxe at that time— 855

The Court: I will sustain the objection to this question. I will say this, gentlemen: That if you want a predicate to impeach the witness, in other words, if he testified differently before Judge Coxe from what he is testifying here, that would be permissible and admissible, but I do not understand this question to purport to intend that, so for that reason I sustain the objection.

Mr. Corbin: Yes.

Q. What was it that Judge Coxe said to you when you left?

856 Mr. Schachner: Your Honor, I repeat my objection.

The Court: I will sustain the objection as to what Judge Coxe said.

Mr. Corbin: I am only asking, Judge, about something that was testified to on direct.

The Court: Well, what Judge Coxe said was immaterial, so I will sustain the objection.

Q. On your direct examination—I am referring to page 89—you said, did you not: "Judge Coxe said that Schulman and I should try to get together and straighten this
857 thing out."

Right? A. Right.

Q. And denied your application? A. He did.

Q. Now will you tell us what you said to Judge Coxe of this court on that occasion with reference I mean, of course, to Morton Goldman's conversation? A. I told him in substance that we had had this meeting over at the Dry Goods Association, that Morton Goldman of the firm of Goldman, Maltef & Goldman had made a proposition to me in the presence of Mr. Wishbaw to the effect that he wanted to get a private buyer for the stock in question and that they wanted to split a certain amount of money which they
858 would get from this private buyer amongst Goldman, Kandell and myself and the auctioneer, and the like. I also told him that they had tried to—they told me they were going to try to arrange for a settlement of 40 per cent for creditors and that the difference between the amount that would be required to straighten out that 40 per cent settlement plus some additional moneys for administration fees, and the amount that they would actually get from this private buyer would be split amongst these parties and that the true amount of the sale would not be disclosed to the creditors.

Q. You told Judge Coxe all this? A. I did, and I told 859
that to him in the presence of Mr. Wishbaw, Mr. Kolman, I think Mr. Dunn was there, Mr. Schulman, the three creditors and I.

Q. And he said, "Go out and straighten this thing out"? A. No. He asked the creditors what they thought of the matter.

Q. And he paid no further attention to your charges against Goldman? A. Schulman said that he had nothing to do with Goldman, Malter & Goldman.

Q. Schulman said that? A. Schulman said that he wasn't concerned in any argument between Goldman and myself.

Q. That is all right, but you knew when you told Judge 860
Coxe what you say you told him, that Judge Coxe would be intensely interested in any such conduct on the part of an attorney, didn't you?

Mr. Schachner: Your Honor, I object to that.

The Court: I sustain the objection.

Q. And you say after you had revealed, as you say, to Judge Coxe of this court what you have just recounted here, he said what?

Mr. Schachner: Your Honor, I object to this question on the ground that it is wholly immaterial. 861

The Court: It was gone into on direct examination. I will overrule the objection.

A. He said, "You men get together and straighten this thing out."

Q. And it did not concern him? A. Pardon?

Q. It did not concern Judge Coxe so far as Morton Goldman doing anything wrong as a lawyer? A. It may have—

The Court: Just a moment. I will sustain the objection.

862 The Witness: Oh. I saw no objection, that is why.

Q. You were pretty angry that day, weren't you, at Morton Goldman? A. I was fit to be tied.

Q. So you ran to the FBI? A. I didn't run to the FBI.

Q. All right. From that time on—oh, what were you so fit to be tied about, by the way? A. I was astounded the way that lawyers in this city would conduct themselves so that they were nothing more or less than racketeers. Here was a situation where an assignment for the benefit of creditors was filed. The prime intention was to distribute
863 whatever assets there were in the estate to creditors. Along come an attorney and some member of an association and they say in effect, "You either cut us in on this or we are going to put you into bankruptcy," that is, the estate.

Mr. Mintzer: I object to this statement, what they said in effect. Let him say what they said.

Mr. Walsh: No. That is responsive, if your Honor pleases.

The Court: I will sustain the objection—

Who do you represent?

Mr. Mintzer: I represent Mr. Kandell.

864 The Court: I will sustain the objection as far as Mr. Kandell is concerned. I think the answer is responsive to the question as counsel for the defendants has put it.

Mr. Corbin: I called for the speech.

Mr. Walsh: And I think he ought to be allowed to continue his explanation.

The Court: I will allow it.

Q. Go ahead. A. I was astounded at the way they worked this. In other words, one group of lawyers would come up and say that they would want to be made the co-attorney

and the co-assignees, and then they would slide out of the 865
picture in a way, and have another attorney file a petition in bankruptcy and make it appear as if one had nothing to do with the other.

Q. And why— A. And furthermore, I was also astounded at the fact that attorneys in this city would enter into deals to sell out their own clients because if they represented creditors in that picture and they were going to make deals with private buyers and split undisclosed amounts, why, that was putting in money into their own pockets and cheating their own clients, and that's why I was fit to be tied.

Q. What office are you running for? A. I am running 866
for no office—

Mr. Walsh: I object to that.

The Witness: Mr. Corbin, and you would have felt the same as I did at that time.

Mr. Walsh: I object to that.

The Court: Just a minute. There is an objection. I sustain the objection.

Q. Of what committee of the Bar Association are you a member of? A. None. I am only a member of the New York County Association. 867

Mr. Walsh: I object to that.

The Court: I will overrule the objection.

Mr. Walsh: May I call your Honor's attention, or will your Honor take judicial notice of the canons of ethics that lawyers are supposed to know that if they find a situation such as this described from the witness stand, that he is under a duty as a lawyer and an officer of the court to let the FBI know. Will you take judicial notice of that?

The Court: The question was: What association of lawyers does he belong to. I think that is a

868 competent question. I will overrule the objection.

The Witness: New York County Lawyers Association.

Q. And do you claim to be somewhat of a politician too? Don't you? A. I don't claim anything, Mr. Corbin.

Q. When Mr. Morton Goldman made, as you say, this proposition to you out in the hall on the 25th of March, you told us on direct examination that you left it with him—"Well, I will see what I can do"? A. I said I will think it over.

Q. Did you mean that? A. Pardon?

869 Q. Did you mean that? A. Of course I meant that. I would think it over and keep away from him, and possibly they get some sense in their heads and leave me alone.

Q. Why didn't you say to him, "I won't stand for anything of that kind"? Why did you tell him, "I will think it over"? A. Because if I told him that thing, they would have filed the petition practically the same day or the following day.

Q. And that would mean that your fees would not materialize? A. That means that the whole thing would be in a fine mess and jumble.

870 Q. In Federal Court? A. Yes, sir.

Q. A fine mess and jumble? A. Yes, yes.

Q. Here in this court? A. Not a mess—not on account of the fact that it was in the Federal Court, but because lawyers like that would handle it.

Q. You wanted to run it under your own office? A. Yes, with their cooperation.

Q. And you were fit to be tied when a prospect loomed that it might get under this roof here? A. No. I was fit to be tied at their actions.

Q. So you set out to try to get evidence on them? A. When?

Q. From April 5th on. A. No. I went over to Referee 871
Kurtz and I told him about the situation and he told me that there had been many complaints made about these same defendants and he asked me whether I wanted to tell my story to the Federal Bureau of Investigation's representative, and I said I would and he called somebody down and I told him what had happened, and from that day on I was under instructions of the FBI.

Q. Now do you feel happy in that answer? A. I don't feel happy. I would give anything in this world not to be in this courtroom testifying against another lawyer, but you know, Mr. Corbin, if you were in my place you would do the same thing. 872

Q. You think you made time when you told the jury just now that Referee Kurtz told you that he had had other complaints against these defendants? A. Why, Mr. Corbin, if you knew how many attorneys in this city had experiences with these defendants you would be surprised.

Q. Are you on the payroll in this case? A. You know I am not.

Q. You are very content now, aren't you? A. I am not content. I am very much disturbed, Mr. Corbin.

Q. You think you have stuck into the defendants and turned it around? A. I do not think that, but I think 873
you have asked for it and you have asked me to answer a question and I have answered it.

Q. And you pretend here to be a fair and impartial witness, don't you? A. I am fair and I am impartial.

Q. All right. Don't say any more. You said that Morton Goldman on that 25th of March said to you, "Well, I will take care of these little creditors. They don't amount to anything. I will throw them a $10 bill a piece." A. That is correct.

Q. And you told them that their claims didn't amount to anything? A. I don't think the total of those three claims were over $250, $300.

874 Q. Do you know that the creditors that these men represented in this case totaled almost half the total amount of claims? A. I think your last question referred to those creditors who were present in the room at the time that that meeting was held; isn't that so?

Q. Well, those creditors' claims totaled close to $1000. A. Those three in the room?

Q. Why, certainly. A. You mean Kreiselman, Ribach & Mantis; and Schwartz & Zuckerman? I don't think they totaled over $300, Mr. Corbin.

Q. So you want us to understand that Goldman—

875 Mr. Walsh: I object to that, if your Honor pleases. The final accounting which is in evidence will speak for itself, and that is the best evidence, without "understanding." If he wants to refer to it I think he should.

The Court: I will sustain the objection to this extent: That the question is just not clear as to what creditors he represented, or that counsel for the defendants had reference to in the question. I don't get it myself, what creditors he was referring to. The witness is entitled to know what particular creditors' claims amounted to a certain amount.

876 Mr. Corbin: Yes.

Q. What I meant was the creditors represented there at that meeting. A. Why, as a matter of fact, I didn't know whether they represented any creditors other than the fact that I think Mr. Kandell or Mr. Theodore Goldman, at the time when they first came up to my office on the 25th, told me that they represented Butler Bros. If that is what you mean, that plus what they had in the room would total over $1000.

Q. What is that? A. I say the claims of Butler Bros. plus those of the three creditors that I named, who were

in the room and to whom I referred as having a $10 bill 877
thrown to them—

Q. Yes? A. —would total about $1000, I think. Is that what you have in mind?

Q. Well, that was a very substantial representation out of $2500. That was 40 per cent of the creditors that you are talking about. Do you mean to say that for $1000 total claims, as Goldman said, "Well, I will throw a $10 bill to them and that will take care of them"? A. Well, I think they had a talk with Mr. Niehaus before the meeting was had in which Goldman—

Q. I did not ask you about a talk with Niehaus. I don't even know him and— A. Well, I did not think he was 878
a representative of Butler—

Q. Will you answer my question?

Mr. Schachner: May I object to this?

Mr. Corbin: I will withdraw the question.

Mr. Mintzer: Just a minute, Mr. Corbin. He said, "I do not think they represented"—

The Witness: No. I said I don't think Goldman represented Butler Bros.

The Court: So far as the defendant Kandell is concerned, I will sustain the objection.

879

Q. At that time there never had been any claim anywhere that my client Goldman represented Butler Bros.—was there? A. There was a—Mr. Kandell and Goldman came up to my office on the noon of March 25th. They said they represented Butler Bros.

Q. Goldman did not say anything about that? A. I can't tell you which one said it at that time, that they represented Butler Bros.

Mr. Corbin: Did Kandell represent them?

Mr. Mintzer: Yes.

Mr. Corbin: Kandell represented Butler Bros.

880 Q. All right. But what I am getting at, this story about throwing a $10 bill in order to cover up this fraudulent proposition that Goldman was making to you, as you say, do you mean to say here that he told you that he could satisfy those creditors with a $10 bill a piece? A. Mr. Corbin, if you saw them I think that they could be satisfied for less.

Q. So that appealed to you as all right? A. It appealed to me as being rotten.

Q. It appealed to you as being something that Goldman could do with the creditors, eh? A. From what—

881 Mr. Schachner: Your Honor, I object to this question. Will Mr. Corbin please make it perfectly plain which creditors he means, those who were present in person or those represented by the defendants.

The Court: I will sustain the objection to that question.

Q. Did you make an arrangement on the 25th of March to let the creditors in the store so that they could examine it and find a purchaser for the stock? A. On the 25th of March?

382 Q. Yes. A. I think on the 25th of March the—

Q. Can you say yes or no to that? A. Let me explain. My Kolman was down in the store and the auctioneer's men were lotting the stuff off so that if anybody walked in they could see the merchandise, but I made no arrangement with anybody on March 25th to see it on that date.

Q. Now in this indictment the charge is made that the deal was this: The stock was to be sold for $1900 whereas the creditors were to be told that it was sold for $1500 so that—

Mr. Corbin: What is the waying to the witness?

Mr. Schachner: So that he doesn't answer your question, Mr. Corbin. 883

Mr. Corbin: It is difficult for me to understand this continental finesse.

The Court: That is a direction to the witness that he desired to make an objection as soon as the question was finished.

Mr. Corbin: I see.

The Court: That is what I took his motion for.

Mr. Corbin: You just nonplussed me.

The Court: Very well, gentlemen. I believe we will take a recess now to 2:15. This case will be recessed to 2:15. 884

(Recess to 2:15 P. M.)

AFTERNOON SESSION.

ROBERT HOFFMAN, resumed the stand.

Cross examination continued by Mr. Corbin:

Q. Mr. Hoffman, if bankruptcy proceedings had been resorted to, to handle this estate, the Court would have appointed some impartial person to administer the assets, 885 is that right? A. They usually have a receiver and a trustee—there would be two, I think.

Q. Not necessarily. A. Well, my understanding of it is this: That if a petition in bankruptcy had been filed the Court, on application of one of the interested parties, would have appointed a receiver, and then after a meeting of creditors a trustee would have been elected. I think that is the procedure.

Q. There was no business to continue, was there? A. No, sir.

Q. All that it would need would be a receiver? A. To

886 take care of the assets immediately before a meeting of the creditors.

Q. Maybe a custodian? A. I think the usual procedure is to have a receiver appointed on the application of the parties to preserve the assets until there is a meeting of the creditors.

Q. By way of bankruptcy there would have been some impartial person appointed by the Court? A. That is the case.

Q. As distinguished from an employee of yours, selected by you? A. Well, if you want to make that distinction, that is so.

887 Q. Let me make one other distinction: If bankruptcy had been resorted to your client Hymowitz would have gotten a complete discharge of his debts, would he not? A. That would follow. When you say "my client," you mean the assignor. I do not want to keep on going back, Mr. Corbin. I tried to explain before the difference there with respect to Hymowitz.

Q. Hymowitz in bankruptcy would have gotten a complete discharge of his debts? A. That is correct.

Q. Never would have had to pay anybody? A. That is correct.

888 Q. In the procedure that you adopted, the assignment proceeding, he could not possibly get a discharge of his debts, could he? A. No, he would be liable to creditors for the difference between the amount of the dividend which the creditors would receive in the assignment and the amount of the debts.

Q. Now one other matter: If bankruptcy had been resorted to, if the petition had gone through and the proceedings had not been dismissed—I am referring to bankruptcy now. A. Yes, sir.

Q. You knew you could not reasonably expect as much, by way of fees, as you did expect in the assignment pro-

ceedings, is that right, yes or no? A. I think the assignee on application to the Federal Court would have received the full amount. 889

Q. Please, Mr. Hoffman. My question is understandable, isn't it? A. I would say yes, sir.

Q. That is, you knew a filing of a petition in bankruptcy would result in cutting your fees that you expected to get in the assignment proceedings? A. Because there would be less work done. In other words, my work would cease from the time the receiver was appointed.

Q. You would not have had any standing in the bankruptcy? A. You are absolutely correct.

Q. You didn't represent any creditor? A. But I am entitled on application to the court in bankruptcy proceedings to a fee. 890

Q. For representing whom? A. Representing the assignee and preserving the assets of the estate for the bankrupt's creditors. That I think is the usual procedure.

Q. You would not get 10 cents on the dollar to what you expected in the bankruptcy proceeding? A. I think I would get more than 10 cents on the dollar, much more.

Q. Can we at least agree on this: There was a bright prospect of your fees being cut considerably? A. When you say "fees being cut considerably," we cannot tell, Mr. Corbin, what amount the Court will allow in the assignment proceedings. It is up to the judge who makes or grants the allowance. 891

Q. It is not a question of possibly getting what you might realize out of the matter that caused you even impartially to get so angry about the filing of the petition? A. That fact in itself, absolutely not.

Q. That didn't enter into it, one particle? A. No, sir.

Q. You saw Morton Goldman on the course of the entire assignment proceedings on two occasions, is that right? A. I saw him—

892 Q. Cannot you say yes or no to that? A. Will you let me think about it.

Q. Think to yourself, not out loud. You saw him on March 25th? A. Right.

Q. Never had seen him before? A. I don't think I did.

Q. You saw him on April 7th, didn't you? A. Right.

Q. And never saw him after that in the course of the proceedings? A. Wrong.

Q. When after that did you see him? A. I think in the middle or latter part of May, 1937.

Q. Where? A. At his office.

Q. Did you have any conversation with him? A. No,
893 he walked through the—

Q. That is the answer. So on two occasions did you talk with him? A. That is correct.

Q. On the first occasion, March 25th, he, together with the others present, were advocating—I will put it that way—40 per cent net dividend to creditors in order to settle this thing up, by way of a private sale? A. What do you mean by "advocating"?

Q. Suggesting, asking to bring in a substitution, and if that could not be done, try to persuade you to enter into such arrangement. A. They attempted to persuade
894 me to enter into an arrangement whereby the creditors would get 40 per cent at that time, that is correct.

Q. The plan was, their plan was to avoid auctioneering expenses and other expenses by having a private sale called a bulk sale; that is right, isn't it? A. That was part of their plan, with the exception that the auctioneer had already incurred some expense.

Q. All right. That plan of selling out and giving creditors a net 40 percent was not agreeable to you, was it? A. Not in the manner in which it was proposed.

Q. You say that there was, outside in the hall, an improper proposal put up to you by Morton Goldman? A. Yes, sir.

Q. Which you said you would think over? A. Yes, sir. 895

Q. And nothing else occurred so far as Goldman was concerned after that until you heard that a petition in bankruptcy had been filed, is that correct? A. That is correct.

Q. So you want the jury to understand that without any further communication to him, you having told him you would think over this illegal proposal, you went ahead and filed a petition in bankruptcy? A. No—

Q. Well, Schulman did? A. Schulman filed the petition in bankruptcy.

Q. Without asking you what you had decided to do about it? A. I don't think Schulman communicated with me. 896

Q. I say Goldman didn't communicate with you in the meantime, asking you what you had decided? A. Why, Phillip Cohen on the Dry Goods Association called and asked me to call Goldman—

The Court: You are not to consider that answer. The question was with reference to Goldman, whether he communicated with you or not.

The Witness: He did not, sir.

Q. In the indictment, and in the opening of Government's counsel, a figure of $1900 has been mentioned as representing a figure of $400 more than the actual figure of the sale. That is, the kickback was from $1500 up to $1900. 897

Mr. Corbin: That is only preliminary, Judge.

Q. (Continued) Was there any talk that you heard at any time to anybody about a $19000 figure at which the stock was to be sold? A. No, sir.

Q. Did you ever hear of anybody in the City of New York or elsewhere who ever offered $1900 for that stock? A. No, sir.

898 Q. What was the figure, if you can tell us, that you claim was to be split up among you lawyers, according to your talks with Schulman? A. Well, there was a difference of $400 between the $1200 that was to be reported to creditors and the $1600 that Schulman said he could get from his private buyer, and then there was—

Q. Doesn't that answer it? A. No. You asked me what sum was to be split up.

Q. Between what figures, and you have given us that. A. You have got those vouchers. There was money coming of the City from vouchers.

899 Q. That was to be split up? A. Part of that was to be added to the $1200, and then from the difference between the amount that would be required to pay the 40 per cent to creditors, which was computed at that time to be about $1000, and then they had this sum of 12 plus 3, about $1500, and then part of that $500 was to be used for disbursements and administration expenses, and then anything that was left by way of a fee there, to which I would be entitled, would be added to the $400 and that entire amount split the three ways I told you about.

Q. When you say "they", you mean Schulman, because these talks were with Schulman? A. Yes, sir. The talks with Schulman—

900 Q. That answers it. A. And some talk with Teddy Goldman.

Q. You told about that on direct examination, whatever talk you had with him then? A. No, I don't think I testified about that last statement on direct examination.

Q. The talk that you had in which this split up that you are mentioning was discussed— A. That was with Schulman.

Q. Was that with Schulman? A. Yes.

Q. And Morton Goldman wasn't there? A. No, sir.

Q. And Theodore Goldman wasn't there? A. No, sir.

except that that conversation, the latter part of May, 1937— 901

Q. Well, was Schulman present at that? A. Schulman was present.

Q. When was that? A. I should judge that was in the latter part of May, 1937. That was at the time that—I think an application had been made by Endicott Johnson to remove the assignee and that was subsequent to the dismissal of the petition in bankruptcy.

Q. Well, Teddy Goldman, the younger man was preparing papers in connection with those proceedings and the settlement that had been arranged, is that right? A. He was to prepare those papers.

Q. He was the draftsman of those papers? A. Yes, I 902 imagine he was the one to take care of the papers.

Q. Did this talk about split up and the four hundred plus something, was that with Schulman in the absence of both Teddy Goldman and Morton Goldman and in the absence also of Kandell? A. That is correct.

Q. And you say that your talk with Schulman was in effect that that was to be split three ways, that approximate figure of $400? A. Yes.

Q. And that one-third of it was to go to, as you put it, the Goldman outfit, that is, his firm, you mean? A. Yes.

Q. Out of which you say they were to pay Kandell? A. 903 Take care of Kandell.

Q. Then one-third of 400 would be 133, and that split would be $66 or $67 to the Goldman outfit—. A. No.

Q. (Continuing) —composed of three partners getting about $20 each, is that it? A. No, it is even less than that.

Q. Less than that. A. Because they had the 400 divided three ways, that is, 125 and then Schulman suggested the additional 25 go over to Kolman. I mean that was part of the general discussion that took place at several of the meetings.

904 Q. So on the theory that you are advancing, from your talks with Schulman Mr. Goldman stood to get about $20 out of the fraud that you say he committed?

Mr. Walsh: I object to the theory and I object to the form of the question. It isn't a theory. It is what he testified actually happened.

The Court: I sustain the objection.

Mr. Corbin: Yes. I guess it is summarizing.

Q. All right. Now the next time you met Morton Goldman was on April 7th? A. That is right.

905 Q. And that was in Schulman's office? A. Right.

Q. Did Morton Goldman say anything wrong there? A. No. He was—

Q. O. K.? A. —pretty well het up about the fact that I had made certain statements to Judge Coxe and he said those statements I made to Judge Coxe weren't true and I reiterated the fact that what I said to Judge Coxe actually took place, and otherwise—

Q. So you were disputing with each other on April 7th as to what the truth of the March 25th talk had been? A. No, what the talk on April 5th had been.

Q. Well, on April 5th you recounted to Judge Coxe you 906 said what occurred on March 25th? A. Yes.

Q. And on April 7th Goldman told you that it was a damned lie, didn't he? A. Yes.

Q. And at that time you were in cahoots with the FBI?

Mr. Walsh: I object to the characterization of "cahoots."

The Court: Yes, I will sustain the objection.

Q. I mean, you were there on that occasion, on April 7th when this talk was had, cooperating with the FBI and in the knowledge that they had a dictaphone on the

other side of the wall listening to the conversation, didn't you? A. I was there under instructions of the FBI. 907

Q. Yes, and you didn't tell Morton Goldman that, did you? A. No, sir.

Q. In fact, you got him to come over there, didn't you, pursuant to an understanding that you had with the FBI that you would ask him to come over there? A. No. Schulman asked him to come over.

Q. But you got Schulman to ask him over because you wanted to have the conversation recorded? A. I arranged the appointment with Schulman.

Q. You went over to Schulman's office? A. Yes, sir.

Q. And when you got there you put in a call for Morton Goldman to come over? A. I didn't put in a call for Morton Goldman. 908

Q. You got Schulman to do it? A. No, Schulman did it.

Q. You knowing that the agents, the government agents were on the other side of the wall listening in? A. Yes, sir.

Q. Now Morton Goldman did not suspect for a minute that there was any set-up like that in that room or in that wall so far as you know, did he?

Mr. Walsh: I object to the form of that question. It calls for a conclusion what Goldman suspected, as he cannot answer. 909

The Court: He says, "So far as you know." I will let him answer.

Mr. Walsh: I am sorry. I didn't hear that.

A. I don't know what Mr. Goldman suspected.

Q. I will put it this way: you supposed, as you were in that room, that the talk was being recorded: right? A. What do you mean by "being recorded"?

Q. By a device, a listening device which amplified the sound in the next room? A. I don't know just what apparatus they had there.

910 Q. I don't care. You knew that the government agents were on the other side of the wall taking down the conversation that occurred in Schulman's office, didn't you? A. I understood that they were listening in.

Q. Well, that is why you went over there. A. (No response.)

Q. You knew they had wired his office before you went, didn't you? A. I knew they intended to listen in on the conversation.

Q. Intended to? You knew that before you went over on the job. A. No. I knew that an appointment had been arranged.

911 Q. You went over there, having gone there with the knowledge of the FBI? A. Let us put it this way: I expected them to be there at that time.

Q. Well, hadn't you told them you were going over at that time? A. I certainly did.

Q. So your understood when you went over there that they were set to take the talk? A. I had that idea.

Q. All right. Now from anything that occurred in the room, that is in Schulman's room, during that conversation while Goldman was there, was there anything that happened that gave you the idea or any reason to believe that either Schulman or Goldman knew what was going on on
912 the other side of the wall? A. I don't think so.

Q. And so you say Morton Goldman came in there without any such suspicion and said to you, "You're a damned liar, I never said any such thing on March 25th." Right? A. He came into the room there and said that he hadn't done the things that I had said he had done when I made that statement to Judge Coxe.

Q. And that is the last of Morton Goldman. He went out after a little more talk of no consequence? A. You mean of personal contact with him?

Q. Yes, so far as you know there wasn't anything more

with Morton Goldman; right? A. I didn't see him after 913
April the 7th, other than the time that he passed through Theodore Goldman's office, at the firm's office.

Q. And although you were there in your opinion to get him down on that recording device that was operating, you never got Morton Goldman to say one word that you could recount here today that was in any way or in the slightest way wrong? A. Mr. Corbin—

Mr. Walsh: I object to the form of that question; it is argumentative and it is going to be the jury's function to decide that.

The Court: I will sustain the objection. 914

Mr. Corbin: That is all.

Cross examination by Mr. Fielding:

Mr. Fielding: I don't intend to go over the ground that Mr. Corbin has covered, but there are several matters that involve my client and I would like to go into them.

The Court: Yes. Very well. You may cross-examine.

Q. When did Kolman see Hymowitz? A. The first time?

Q. I said when did he see him? A. I think he went up 915
there on one occasion in the month of April to get some papers signed by Hymowitz pursuant to Schulman's request.

Q. Is that the first time? A. I think that may have been the first time that Kolman went up there. That was in April.

Q. Well, in that letter of March 24, 1937, I will read from it. This is your letter to the creditors? A. Is that the one that you are referring to, Mr. Fielding?

Q. Yes. A. Yes.

Q. "It is the wish of Paul Hymowitz that his business

916 be liquidated so that the creditors shall receive the greatest possible benefit and has entrusted Mr. Kolman with carrying out his wishes."

Well, how could he carry them out if he never met him?

Mr. Walsh: I object to the form of that question.

A. Why, he could relay that through me, Mr. Fielding.

Mr. Walsh: That is immaterial and irrelevant; "how could he do something."

The Court: I will overrule the objection.

917

A. Why, it was relayed through me, Mr. Fielding.

Q. Through you? A. I explained to Mr. Hymowitz that Mr. Kolman was in my employ and also associated with me.

Q. All right. Now who was the first one to your recollection that suggested a bulk sale? A. I think there was a Mr. Goldstein who was present at the meeting.

Q. Was he a client of Schulman's? A. Over at the—over at the Dry Goods Association?

Q. Yes. Was he a client of Mr. Schulman's? A. I don't know what their relationship was.

918 Q. Well, do you know who he represented? A. I think he also called up on the 24th day of March and he said that he represented another association. I think it was some haberdashery association, and he wanted to know all about that and I gave him practically the same information that I gave to the other two persons.

Q. So the first suggestion of a bulk sale did not come from Mr. Schulman? A. Mr. Schulman wasn't even present at that meeting.

Q. We will come to that. Just answer my question. A. No. I say the first suggestion came from a Mr. Goldstein.

Q. Yes? A. At that meeting on March 25th. 919

Q. And it did not come through either of the Goldmans? A. The very first statement, as I remember, was made by—

Q. Yes or no. A. By Goldstein.

Q. Say yes or no to me, will you please? A. I can't say yes or no to you, Mr. Fielding.

Q. Well, if it first came through Goldstein it didn't come from the Goldmans, did it? A. No.

Q. That is it; that is better. And it didn't come through Kandell? A. No.

Q. And at the same time and at the same meeting when Mr. Goldstein suggested a bulk sale, weren't Mr. Schulman's creditors there? A. At that time I didn't know that they 920 were clients of Mr. Schulman.

Q. But since then you have found that out? A. I found that out when the petition in bankruptcy was filed.

Q. Didn't they suggest a bulk sale, too? A. Yes. They said that they wanted to get buyers, that they would have people who would be interested in buying that and they wanted the keys for the premises, and I told them they couldn't have any keys.

Q. So that the bulk sale suggestion did not emanate from any of these defendants at all, did it? A. Some of them joined in after Mr. Goldstein made the statement to that effect. 921

Q. Well, it wasn't initiated by any of these defendants? A. The first statement to that effect was made by Mr. Goldstein.

Q. But it did not initiate from any of these defendants; yes or no? A. Well, it was so soon after that that you couldn't tell the difference.

Mr. Fielding: I move to strike the answer out as not responsive.

Mr. Walsh: If your Honor pleases, I object to this—

922 Mr. Fielding: Unless he cannot say yes or no.

Mr. Walsh: That has already been answered, to my memory, three times already. It is merely repetitious and immaterial anyway.

The Court: I will let him answer. I will overrule the objection. I think he has answered the question, but just how the answer should be—I think he repeatedly said Mr. Goldstein was the first one, but if Mr. Goldstein was the first one you can say that it did not come from these others. If that be a fact, he can answer the question yes or no, and if he wants to make any explanation, why, I will let him
923 do so, or if he doesn't remember, let him say so, just whatever the facts are.

The Witness: Shall I answer?

The Court: Yes.

A. Well, the first statement to that effect was made by Mr. Goldstein but the other persons there joined in and said that that would be a good idea about having a bulk sale and let each of them go and get a buyer, and it seems they were all anxious to get buyers.

Q. So among the people who were entitled to this estate, that is, the creditors, there seemed to be a fair
924 unanimity of opinion among them that a bulk sale was desirable? A. From those who were present.

Q. Will you answer my question yes or no. A. From those who were present, yes.

Q. None of them were very hot to go through with this assignment proceeding, were they?

Mr. Walsh: I object to the form of the question, the word "hot".

Mr. Fielding: Well, I will take out the word "hot."

Q. They weren't very anxious? A. No, sir. 925

Q. To have the sale conducted and the proceedings go through the assignment? A. Right.

Q. And they were the people entitled to this estate? A. Well, as far as I knew at that time very small faction; there were about 31 creditors and there were only three creditors there, if I recollect, and those three were the ones who signed the petition in bankruptcy.

Q. Well, those three are entitled to a share, aren't they? A. They are entitled to their proportionate share.

Q. And they are entitled to their opinion? A. They certainly are.

Q. Now you were over in Schulman's office on the 5th 926
of April, is that right? A. April 5th, yes.

Q. When was the first time you were there when you knew the FBI men were on the other side of the wall? A. April the 7th.

Q. Now just tell us how that came about, will you? I would like the jury to know; just tell us. You were going to see Schulman what date? A. Oh, you want me to tell you what took place—

Q. How did you get there? A. On the 7th, or events on the 5th leading up to the 7th?

Q. The 7th; we will say the 7th. A. Well, on the 7th I kept my appointment that I had with Mr. Schulman. 927

Q. Now, how did you make the appointment? A. I made the appointment with some of the agents, fixing the time late in the afternoon.

Q. Whom did you call first, Schulman or the agents? A. I think I spoke with the agents first.

Q. And then you told them you were going to make a date with Schulman? A. I told them on the 5th that I had an appointment with Schulman.

Q. And you told them about what time you were to be there? A. No. I was asked to make the appointment for a day or so later.

928 Q. To suit the FBI people? A. I assume that to be the case.

Q. Well, it is a fact, is it? A. Well, it appears to be the fact.

Q. Assume or appear, but is it? A. Well, I don't know what they feel. I was acting under instructions, Mr. Fielding.

Q. Well, coming down to the next time you were there, that was a week later, the 14th. Now how was that fixed? A. I think that appointment was arranged between Mr. Schulman and myself, and I—

Q. Well, who made the arrangement? A. Both of us
929 did.

Q. Somebody had to call somebody first. Now who did it, to the best of your recollection? A. Well, I don't know. There were some conversations between the 7th and 14th over the telephone regarding the offers that Mr. Schulman was to get or had obtained from his buyer or buyers.

Q. Well, did you suggest to go down to his office? A. I think that he suggested that I go to his office.

Q. And then what did you do after you got over? A. Communicated that fact to the FBI.

Q. And kept your date? A. And kept the appointment.

Q. Now when was the next time you were there? A.
930 I think it was on the 21st of April.

Q. The 21st. Now how did that come about, that meeting? A. By some talk that I had with Schulman on the telephone.

Q. After you made the appointment what did you do then? A. I notified the FBI.

Q. And then kept the appointment. A. Yes, sir.

Q. When was the next meeting? A. I think it was the 26th of April.

Q. How did that come about? A. Also in a conversation that I had with Mr. Schulman over the telephone.

Q. And the appointment was definitely fixed for the 26th? 931
A. Yes, sir.

Q. And after you had a definite appointment then you notified the FBI? A. Yes, sir.

Q. And then went and kept the appointment? A. Yes, sir.

Q. And after that was there any further meeting at Schulman's office? A. Not at Schulman's office.

Q. On these meetings that you have testified about, did you make any notes of what happened? A. Not at the meetings; when I got back to my office.

Q. Well naturally you wouldn't sit down in front of Schulman and write out that he was going to fix you up 932
with a couple of hundred dollars. A. Well, I don't know what your question implied.

Q. Right as soon as you left and went back to your office—or did you go over to the office or did you go over to the Federal District Attorney? A. No, I went over to my office.

Q. To your office, and then you dictated what went on? A. Yes.

Q. And then you handed those papers in to the Federal District Attorney or the FBI? A. Yes.

Q. And you did that every time? A. I would say I did that regularly. 933

Q. Was there ever any mention by Schulman to split a secret fund before the FBI men were on the other side of the wall? A. Yes. On April 5th.

Q. April 5th. That is the time that you were fit to be tied. A. That is the time after I came from Judge Coxe's chambers.

Q. Well, were you fit to be tied? A. I was pretty sore at that time.

Q. This morning you said you were fit to be tied. A. Pretty sore.

Q. Now how many of the meetings where you knew the

934 FBI agents were listening was this discussion going on about the cut or the supposed cut of $400, and so on? A. Oh, I think there was general talk about those splits in every one of those meetings from April 7th up to and inclusive the 26th.

Q. And you led the conversation? A. I participated.

Q. You brought it around to that— A. I was there only for one purpose.

Q. Let me finish. You brought the subject up, didn't you? A. I was there for that purpose. Mr. Schulman wanted me to come down. The appointment was made to discuss that.

935 Q. You were there to trap Schulman?

Mr. Walsh: I object to that. That calls for a legal conclusion. That opens up a new door here.

The Court: Yes. I sustain the objection.

Mr. Fielding: Exception.

Q. Now you served the notice of hearing to vacate that order which stayed your sale, didn't you? A. Yes, sir.

Q. Did you make any attempt either on that same day before you appeared before Judge Coxe to get that order ex parte, as we lawyers call it, or without notice? A. To vacate the stay?

936 Q. Yes. A. There was—there was an order—I think there was a set of papers drawn and that was to be submitted to the Court and the effect of that order, if signed, would have permitted the sale to continue subject to the approval of the Federal Court.

Q. So you tried to get that without notice? A. I don't know whether that was ever submitted. I think it was prepared.

Q. Well, you had it in mind? A. Oh, yes. That was when I learned that the petition in bankruptcy had been filed on the Saturday prior.

Mr. Fielding: Will your Honor bear with me for 937
just a moment?

The Court: Yes.

(Discussion among defense counsel off the record.)

Mr. Fielding: That is all.

Cross examination by Mr. Mintzer:

Q. Mr. Hoffman, this Hymowitz case started on March 24, 1937, didn't it? That is the date of the assignment? A. Well, it was, I think, dated the 22nd, Mr. Mintzer, and it was accepted by the assignee on the 24th.

Q. That it was filed in court? A. About that; it was 938
filed on the 24th.

Q. Now I noticed yesterday that your application for allowances was dated December, 1937; is that correct? A. That is correct.

Q. So that the case was pending in the State court and in this court approximately eight months, isn't that correct? A. Approximately, correct.

Q. Now during these entire eight months how many talks did you have with Mr. Kandell, my client? A. I think I had one talk with him.

Q. One talk. And that one talk was on March 25th at your office? A. No. I would say there was two talks on 939
that one day. The first time—

Q. The first talk was on March 25th at your office? A. That is correct.

Q. Do you recall whether or not he told you at your office that he represented Butler Brothers? A. I think one of them did say that, either Theodore Goldman or Mr. Kandell.

Q. And Mr. Kandell asked you about the facts and circumstances relating to the Hymowitz case? A. I think he did.

Q. Do you recall him asking you whether or not you

940 had books and records so that he could look the books over? A. I think there was some statement made to that effect at the meeting which was held in his office the same day, and I explained to him that there were bills and some other records. There weren't any books, in other words, a regular set of books.

Q. What also happened at that meeting was that some suggestion was made for Kandell to act as co-assignee, isn't that so? A. That is at the meeting in my office?

Q. Yes. A. Yes, sir.

Q. Now is it not a fact that if Kandell were permitted to became co-assignee there would not have been added one
941 single penny of additional expense to the estate? A. If Kandell had been permitted to act as co-assignee and nothing else, why, there would not have been a single cent added to the expense of the estate.

Q. I understood you to say this morning, in answer to one of Mr. Corbin's questions, that you did not see anything improper in the request made for Kandell to act as co-assignee? A. At that particular time?

Q. Yes. You thought it might have been unnecessary? A. Yes, sir, there was nothing improper, but I told him it was absolutely unnecessary in this case.

Q. Now did Mr. Kandell at that time say anything to
942 you, or make any suggestion to you that was illegal or improper? A. Well, when you put it that way, let me see: I do not want to term it improper or illegal. I don't just want to be the judge of that, but if you want some of the statements made, I can give you those.

Q. Did he say anything to you that you, as a lawyer, would say was illegal? A. Not illegal.

Q. Let us come to the second time you saw Mr. Kandell, that was on the same day in the afternoon? A. Right.

Q. That was at the creditors' meeting? A. Yes, sir.

Q. Did you have a talk with Mr. Kandell later? A. General talk.

Q. You didn't have a personal talk with him? A. No, 943
sir.

Q. This alleged conversation you had with Mr. Goldman was outside of that room? A. Yes, sir.

Q. Mr. Kandell was not present at that conversation? A. No, sir.

Q. Did Mr. Kandell say anything at the creditors' meeting which you as a lawyer would say was illegal? A. I don't think he did.

Q. Did you see him again after that creditors' meeting? A. No, sir.

Q. During the entire balance of the pendency of the case? A. No, I did not. 944

Mr. Mintzer: That is all.

The Court: Any further cross-examination by any of the defendants?

(No response.)

The Court: Any redirect?

Redirect examination by Mr. Schachner:

Q. Mr. Hoffman, you testified, I believe, that on March 25th, that is the day in which the meeting took place at the Dry Goods & Furnishings Association, Mr. Morton Goldman made a suggestion to you. A. Which suggestion? 945

Q. Didn't you testify that some suggestion was made to you? A. The suggestion to leave the room, or step outside in the hall, or what?

Q. Tell us again everything that Mr. Morton Goldman told you that day.

Mr. Corbin: Objected to as not proper rebuttal.

The Court: I sustain the objection.

Q. Tell us what Morton Goldman said to you outside in the hall.

946 Mr. Fielding: I object on the same ground.

The Court: Sustained. That was gone into fully on cross-examination. I don't think it is necessary to go over things that have been fully developed by both sides.

Q. You testified, did you not, that Morton M. Goldman told you that he was going to throw $10 to the creditors, or each creditor present, did you not? A. That is correct.

Q. Will you explain to the Court and jury whether every creditor of the estate was going to share in that $10, or that everyone was going to get $10?

947 Mr. Mintzer: I object to that.

The Court: Objection sustained.

Q. Will you tell us whether the creditors who were going to share in the $10, or who were going to get the $10, were described more particularly?

Mr. Mintzer: Same objection.

The Court: I sustain the objection.

Q. You were asked on cross-examination, were you not, how the appointment was arranged with Mr. Schulman.
948 Will you please tell us again when the first appointment with Mr. Schulman was made, that is the first appointment after April 5th?

Mr. Fielding: I object to the question as being improper on redirect.

The Court: I overrule the objection.

Mr. Fielding: Exception.

A. Why, the appointment was arranged with Mr. Schulman after I had spoken to one of the FBI men, that is the first meeting after April 5th.

Q. You testified that on April 5th you were before Judge Coxe and subsequently you went to Schulman's office. In that talk in Schulman's office did you arrange an appointment with Schulman to take place in the future? A. I think there was an appointment made to take place the following day, April 6th. 949

Q. Was that before or after you spoke to the FBI and to Referee Kurtz? A. Before.

Q. And what had Mr. Schulman told you for what purpose that appointment was to be arranged, or was being arranged? A. I think that was to have Mr. Kandell and Mr. Goldman meet at his office with him and me.

Q. You were asked on cross examination whether you had ever seen Schulman subsequently, subsequent to April 26th, I believe. Did you ever see him subsequently? A. Why, I saw him as late as December of 1937, about that time. 950

Q. Where did you see him in December of 1937? A. At my office.

Q. What transpired there when you saw him? A. He came up and asked for his cut of the $300.

Q. Which $300? A. That had been allowed to the co-attorneys by the Court in the assignment proceeding.

Q. Did he say what his cut was to be? A. He wanted $50 in cash. 951

Mr. Corbin: I object to it in the case of my client.

The Court: I sustain the objection at this time as to all the defendants except as to Schulman. It might become competent later on. If so, I will instruct the jury at that time, but at this time it has no probative force against any of the defendants other than Schulman. You may proceed.

The Witness (continuing): He asked for the sum of $50 in cash from me.

952 Q. Tell us the whole conversation that took place that day? A. He wanted me to make out a check for $150 to Goldman, Malter & Goldman. He wanted me to give him the check and he said he would get $50 from them and he wanted $50 in cash from me.

Q. Did he say anything else?

The Court: Was that gone into by you on the original examination?

Mr. Schachner: No, your Honor.

Mr. Fielding: We didn't go into that meeting that he is talking about. It was never discussed, your Honor.

953 Mr. Walsh: Questions were asked, did you ever see Schulman after April 26th. This is the time he did see him and they opened the door for that particular part of the case, that part of the conspiracy.

The Witness: What is the question?

Q. Just tell us the whole conversation that took place that day as well as you remember it. A. He came up and said he was entitled to one-third of the $300, and I told him that under the circumstances I think at that time a demand had been made for $150 by Goldman, Malter &
954 Goldman, and I told him I would have to make a check out to Goldman, Malter & Goldman for $150. He said that would be all right, but to give him that check and he would get $50 from them and he wanted $50 from me. I gave him some excuse and he said something nasty.

Q. This $300 was the amount allowed by the Court? A. That is correct.

Q. You were also asked whether you saw Teddy or Theodore Goldman again after April 26th. Will you please tell us whether or not you saw him again? A. I saw him in the latter part of May, 1937.

Q. Did you have a conversation with him then? A. I had some talk with him.

Q. Tell us the conversation that you had with him? A. 955
Well, the talk was in connection with a motion that had been made by the Endicott Johnson people to discharge the assignee, and there was some discussion about what should be done with that motion.

Mr. Corbin: When he says "discharge" I am sure he means removing.

The Witness: I think you are correct, Mr. Corbin, removing the assignee.

Mr. Corbin: To replace him with someone else.

The Witness: I don't know whether any application was made at that time to replace him, but the 956
motion was directed mainly to removing the assignee. So there was a talk over at Mr. Goldman's office. Mr. Schulman was there. I think some call was put in—

Q. Was there anybody else there except the defendant Schulman and Theodore Goldman? A. The only thing is that Mr. Morton Goldman went through the office on two or three occasions. Nothing was said between us.

Q. Now continue. A. I think a telephone call was put in to a Mr. Severance Scott of the Endicott Johnson Company. I think the call was also put in to the attorney representing that company, and an effort was made to have 957
the moving party withdraw or discontinue that application to remove Mr. Kolman, the assignee.

There was some talk there about giving Mr. Severance or Mr. Scott, whatever his name is, $25 or $50 for him to withdraw that, and I think there was also mention made of the fact that while there was some discussion, I cannot recollect the entire thing at this time, but I think it was finally decided that another auctioneer be brought into the picture and that that would pacify this chap by the name of Severance Scott, or Scott Severance, or whatever his

958 name was, so that he could get his cut out of it by way of that.

Mr. Schachner: That is all.

Mr. Mintzer: I hate to interrupt. But here again, your Honor, we have a number of conversations which took place not in the presence of my client, and I would ask your Honor to instruct the jury as to that.

The Court: As far as the defendant Kandell is concerned, that conversation has no probative force as against him at this time.

Mr. Corbin: And that applies as to my client?

959 The Court: Yes, it applies to Morton Goldman at this time.

Mr. Walsh: Any further questions, gentlemen?

Recross examination by Mr. Corbin:

Q. This Endicott Johnson motion that you referred to was made by a lawyer by the name of Siegel, wasn't it? A. I think that is correct.

Q. And he made a rather lengthy application, I mean in point of size of papers to the Court, setting up many facts in connection with the matter and asking for the

960 removal of the assignee, your man Kolman? A. There was such an application, Mr. Corbin.

Q. And he got an order to show cause from Judge McCook in which the Judge restrained the assignee and the attorney for the assignee and the assignor from interfering with, by disposing by sale or otherwise with the property of the assignor at 346 Bowery. Do you recall that? A. What is the question, whether I recall that?

Q. Do you recall Judge McCook so provided? A. Yes, sir, that was in connection with a bulk sale notice which I understand had gone out, of which I had no notice.

Q. Judge McCook's order restrained you and your man

Kolman, that is all I asked you. A. Can I look that over (indicating papers)? I would rather do so. I don't know whether the order was also directed against Goldman. 961

Q. I don't care about the "also." (Shows witness papers.) A. Is this a copy of the order? That is what the order said.

Q. Just as I indicated? A. Yes, sir, if that is the copy of the order on file. If you say it is, Mr. Corbin, I will take your word for it.

Q. And that application was made upon the ground that you were the attorney for Hymowitz? A. May I see it, please?

Q. It says right in the order that you as attorney. A. I want to see it. 962

Q. Yes. (Hands papers to the witness.) Have you got to read that whole file of it to answer the question? A. Mr. Corbin, didn't I tell you there may have been something in here about a bulk sale and I wanted to make certain. Here I am coming to it. The restraining order was applied for on several grounds.

Q. All right. One of them was that you and Kolman were representing the assignor. A. No, one of them was the fact that although I represented Mr. Kolman as attorney in the assignment proceeding, I also appeared as attorney for Hymowitz in the application to dismiss the petition in bankruptcy. That I think was the main ground the attorney there tried to show that I represented an adverse interest; on the face of it he was correct. There was also a statement about the bulk sale, and I think that is the sale the attorney was seeking to restrain. 963

Q. Of course it was. A. That is what he meant by disposing by sale, selling in bulk sale to somebody.

Q. The point is Endicott Johnson when they came into this fresh through an independent lawyer, took the same attitude with respect to you representing Hymowitz and the assignee, that the creditors and Goldman did on March 25th when they came up to your office?

964 Mr. Walsh: I object to that question as argumentative.

The Court: I sustain the objection.

Q. And Goldman was there on March 25th and he wanted joint control, didn't he? A. Yes, sir.

Q. And when Endicott Johnson came in they got joint control? A. They did not.

Q. Well, they applied to restrain you from selling and to remove you on the ground that you represented adverse interests? A. They discontinued that proceeding.

Q. I know. But before they discontinued it they got
965 rid of your auctioneer, or got another auctioneer in there with him? A. They got another auctioneer in with him.

Q. And that auctioneer came in on Endicott Johnson's suggestion? A. Endicott Johnson's suggestion, that was not joint control.

Q. And you told us yesterday that was by defendants. A. Put in by Endicott Johnson.

Q. That $300 Mr. Schachner asked you about on redirect examination was represented by a check, wasn't it? A. Yes, sir.

Q. Issued pursuant to an order of the court? A. Yes, sir.

966 Q. And to whom was that check payable? A. The check was made payable to Robert Hoffman or Goldman, Malter & Goldman.

Q. Did Goldman, Malter & Goldman, or any of them, ever get any part of that check, yes or no? A. Why, the answer is no.

Q. Who got it? A. I got it.

Q. Oh! A. Every penny of it.

Q. You put it in your pocket and kept it? A. No, I put it in the bank and kept it there.

Mr. Corbin: I would like to look up the minutes 967
in the record of yesterday, your Honor.

The Court: You can look that up later and recall him. Any further examination from any of the other defendants' counsel?

(No response.)

The Court: Any further redirect?

Mr. Schachner: Just one question.

The Court: Confine it to redirect.

Mr. Schachner: Just one question, your Honor.

Mr. Corbin: Oh, I think it is here, your Honor.

The Court: All right.

968

By Mr. Corbin:

Q. Speaking of the fees that the auctioneer got, I asked you at page 151 of the record yesterday, "Didn't he get around $300 or over?" And you answered, "Half went to Rabowitz, another auctioneer, put in here by the defendants." A. I may have meant to say "through the defendants."

Q. When you said that it was not true? A. I meant "through" not "by the defendants."

Q. Through them? A. Certainly.

Q. They didn't have anything to do with it? A. They 969
made the arrangements with the attorney for Endicott Johnson.

Q. Certainly, and Endicott Johnson was the one that suggested the auctioneer Lipkowitz? A. I assume that to be the case.

Q. And not the defendants at all? A. The defendants not at all.

Redirect examination by Mr. Schachner:

Q. Was that petition filed by Endicott Johnson withdrawn through the instrumentality of the two Goldmans?

970 Mr. Corbin: I object to it.

The Court: I overrule the objection. If he knows and can give us not an opinion about it, but if he knows it as a fact or not as a fact, he can answer.

A. I think that was arranged by them for withdrawal or discontinuing.

Q. Were you sued by the Goldmans for one-half of the fee? A. An application was made to the Supreme Court—

The Court: I don't think that is redirect on anything on cross-examination, and I am going to con-
971 fine this to the cross-examination, as I am going to confine the cross-examination to something that was brought out on the direct examination, unless you overlooked some of the conversation. If you have I will allow you to reopen it.

Mr. Walsh: The witness was asked on cross-examination a minute or two before whether or not he kept that $300. Having been asked that question, I think it is only fair for the jury to know how and why.

The Court: All right.

Mr. Corbin: On redirect he spoke about $300, and
972 I asked him did he keep it. He said "Yes."

Now this is another subject that he wants to go into.

The Court: That is not cross-examination about anything brought out.

Mr. Schachner: I will withdraw it.

SAMUEL S. KOLMAN, called as a witness on behalf of the government, being duly sworn, testified as follows: 973

The Court: We will now take a few minutes recess.

(SHORT RECESS.)

Direct examination by Mr. Schachner:

Q. What is your occupation, Mr. Kolman? A. I am an attorney.

Q. You are associated with Mr. Hoffman in the practice of law? A. I am.

Q. Were you the assignee in the assignment for the benefit of creditors of Paul Hymowitz? A. I was. 974

Q. Did you ever go down to the store of Paul Hymowitz? A. Many times.

Q. Did you show the store to anybody who called up and asked you to see the store? A. I certainly did.

Q. You showed the store to everybody who called up? A. Well, if I found out that they were interested in the estate and in some cases they sent letters confirming the appointment. In other cases they asked me to telephone them for an appointment and I would do that.

Q. Did you ever go down to the store in the company of the defendant Schulman? A. I made an appointment with Schulman, I think it was in the early part of April, in the 975 early afternoon. He said that he wanted to show the stock of merchandise to a prospective buyer. I made that appointment and I met him there that afternoon.

Q. Did he come alone? A. He was accompanied by a person whom he introduced as Mr. Lieberman, and I think with him was another man. I don't recall whether he said he was Abramson or not.

Q. Well, tell us what happened that afternoon, what conversations took place. A. Well, after Lieberman inspected the merchandise Schulman said, "How much can

976 you tell us," and they withdrew to a corner of the store—I was a short distance away—and they talked in a low whisper, and during that conversation I heard the expression "five line."

After their conversation Schulman turned to me and he asked me whether he could talk to me the same as he could to Hoffman, and I said, "No, Hoffman was handling that." I then closed the store and Schulman and I walked towards Broadway. During that walk he told me that Hoffman was childish because he had opened up to the judge and told him the plan of Goldman. And he said, well, he supposed that Hoffman was very stuborn and that we were green-
977 horns and we had no right being in the case. I asked him why and he said, "Because just as others control the millinery line and the house furnishings line, so this Dry Goods Association controlled the dry goods and men's wear line, and any time there was an assignment the Goldman outfit handled it."

Q. Is that all that was said? A. So far as I recall, I think that was the substance of the conversation.

Mr. Schachner: Your witness.

Cross examination by Mr. Fielding:

978 Q. You say Mr. Schulman came to the store early in April? A. Yes, sir.

Q. And accompanied by Lieberman. Who was Lieberman? A. I think there was a—there may have been the firm of Abramson & Lieberman. I didn't know him. I had never seen him before.

Q. You don't know for what purpose he came? A. I think Schulman had said that he was a prospective buyer.

Q. Wasn't there some arrangement made for different prospective buyers to come at different hours? A. Well, no arrangement was made with me. Mr. Hoffman told me that

they may come up and make an appointment to see the store. 979

Q. Well, didn't you have several appointments of that character? A. Yes, sir.

Q. All at different times? A. At different times during that day.

Q. Yes. A. And at different times other days.

Q. And were you told the purpose of having these people come at different times? A. No, I wasn't told.

Q. You don't know anything about that? A. No.

Q. There was another man with him? A. I think there was, yes.

Q. But you don't know his name? A. I am not sure. I don't know whether Schulman introduced him to me. I 980 assumed it was Abramson.

Q. Did you know Schulman represented creditors? A. Oh, at that time I had known because the petition in bankruptcy had been filed before that meeting.

Q. You knew that he represented creditors? A. Yes.

Q. And that was why you let him, let his man inspect the merchandise? A. Yes.

Q. You say they went off in a corner and had some whispered conversation? A. That is right.

Q. After inspecting the merchandise? A. That is right.

Q. And all you heard of that conversation was "five line"? A. Yes, "five line." I thought it had something to do with 981 the price and that is why I remembered it.

Q. Well, it has no other intelligible meaning to you, has it? A. No. I don't think it does.

Q. Schulman asked you if you had the same authority or some authority so that he could talk to you, did he not? A. No, "Can I talk to you the same as I would to Hoffman."

Q. Well, yes. Isn't that it? A. Well, those were the words, I think, that he used.

Q. And you said you would have to see Hoffman? A. I said, "No, Hoffman was handling it."

982 Q. He expressed an opinion on the way to Broadway that Hoffman was childish? A. Yes.

Q. Well, did you know at that time that the creditors wanted this estate to be administered through bankruptcy? A. Well, the petition in bankruptcy had been filed, I think, on April 3.

Q. Did you know that there had been some dissatisfaction with the present method that then prevailed before the petition was filed? A. I didn't know there was any dissatisfaction with the present method.

Q. You did not know anything about it? A. Not about that.

983 Q. What did he say about "as others control" what lines? A. The millinery line.

Q. The millinery line? A. Yes.

Q. Did he mention any names? A. He did mention a name.

Q. Whom did he mention? A. Hirsch.

Q. Who is he? A. I don't know.

Q. And he said the Association—I presume it is the one that Mr. Kandell represented? A. That is that Dry Goods & Furnishings Association.

Q. Whenever an assignment or bankruptcy took place they handled the matter? A. He didn't mention bankruptcy.

984 Q. Well, it was a failure? A. Any assignment, he said.

Q. That means failure? A. It means insolvency.

Q. Yes. So that if it happened in that line in which this store was dealing, then it was a natural sequence that the Association would step in as a representative of creditors? A. He did not put it that way, no, sir.

Q. Well, it did not have an interest in the store itself, did it? A. He said whenever there was an assignment in that line it was a rule that the Dry Goods Association would handle it and that the Goldman boys handled the matter.

Q. As attorneys for the— A. That we had no business being in that case. 985

Q. And it was properly a matter for the Goldmans representing the Association? A. It was not properly a matter for the Goldmans representing the Association.

Mr. Walsh: I object to the form of that question.

The Court: I will overrule the objection. This is cross examination.

Q. There was no mention made at that time of any fake sale or fake bid, was there? A. Not to me.

Q. You never had any information that such a thing was suggested at any time, did you? A. I—Mr. Hoffman had told me about it, yes. 986

Q. Not from these defendants; not from Mr. Schulman? A. (No response.)

Q. You did not hear any suggestion from Mr. Schulman to that effect? A. Oh no, not from Schulman to me directly.

Q. No. A. No, sir.

Q. Or either of the Goldmans? A. Not directly, no, sir.

Q. Or Kandell? A. At no time, no, sir.

Mr. Fielding: That is all.

Cross examination by Mr. Mintzer: 987

Q. Mr. Kolman, in all your life did you have one conversation with Mr. Kandell? A. No, sir.

Q. You never spoke to him in your life? A. I never did. I never knew him until I saw him in court here.

Mr. Mintzer: That is all.

Cross examination by Mr. Corbin:

Q. Did you have any conversation with Morton Goldman? A. No, sir, I never did.

Q. At any time? A. I don't know, no, sir.

988 Q. You don't know him. A. No, sir.

Q. And does the same hold true with respect to Theodore Goldman? A. Well, I did have some contact with Theodore Goldman.

Q. In connection with some papers he prepared to go through with the settlement? A. Well, I think—I recall a day in May, the latter part of May I went down to Theodore Goldman's office and I signed a retainer, retaining Lipkowitz and Wishbaw as co-auctioneers.

Q. Nothing unusual occurred there? A. No.

Q. And was that the same occasion that Mr. Hoffman was present at? A. I don't believe Mr. Hoffman was there
989 on May 28th when I signed that retainer.

Q. I show you this Government's Exhibit 1 (handing witness). That is the original assignment, is it not? A. It appears to be, yes, sir.

Q. And you executed it, didn't you? A. Yes, I did.

Q. Accepting the job in effect?

Mr. Walsh: I cannot hear you.

(Record read.)

Mr. Corbin: Of course, Hymowitz executed the assignment. This witness executed the paper. Just below it on a printed form—

990

Q. What do you call it? It is signed by the assignee. That is your signature, isn't it? A. That is my signature. I accepted the trust imposed on me.

Q. Yes. Tell me, did you prepare this paper (indicating)? A. I may have. I am not sure whether I did or whether I did not. I may have prepared it.

Q. All right. Now I show you this petition and order for bond and sale, signed by you, and the order signed by Judge McLaughlin. Did you prepare that paper (handing witness). A. I think I caused that to be prepared.

Q. Well, do you know who prepared it? A. I think I

dictated that petition and order, and if I recall I think it 991
was done at the auctioneer's office.

Q. Not your own office? A. No, not my own office.

Q. Well, you recall rather distinctly that in the petition which was signed and verified by you that you said that you had caused to be made an examination of the entire assets and had been informed and "verily believes upon investigation of the same that the entire assets, consisting of Army and Navy goods, fixtures and so forth are of the value of about $1500."

Do you recall that? A. Yes. I consulted the auctioneer with respect to the amount to put down for the purpose of obtaining the provisional bond so as to qualify. 992

Q. Had he seen the stock before— A. Yes, he had.

Q. You talked with him about the value? A. Yes, I had.

Q. And was it the investigation that he made upon which you made this allegation of the value being $1500? A. As I recall, I think I was with him when he was making that preliminary inventory so that it would assist me in preparing the petition for the purpose of procuring the order of sale and getting a provisional bond.

Q. Then this $1500 figure was put in here after investigation by the auctioneer as well as personal visitation by you to the premises? A. That's right, and he told me 993
that for the purpose of procuring the provisional bond that round figure of $1500 would be sufficient so that I could enter upon my duties for its faithful performance.

Q. The auctioneer told you that? A. Yes.

Q. Well, the Court had to tell you that, didn't it? A. Well, I submitted that to the Court's approval and apparently the Court did approve of it.

Q. You knew the rule that the value of the property that was coming into your hands had to be stated fully and fairly? A. That was the figure that the auctioneer

994 that we had retained gave and I took his figure for that purpose.

Q. Well, I am not criticizing— A. Now if, Mr. Corbin, that sale brought in more, why, the Court would have asked me to increase the bond and that would have been done.

Q. Of course I am not questioning that. My point is when you signed this you had made a real effort to ascertain the actual value of the entire stock that was coming into your hands, hadn't you? A. Well, I wouldn't call it a strictly real effort. I would call it a preliminary inventory that the auctioneer prepared so that this petition
995 might be submitted to the Court.

Q. Well, you knew the auctioneer— A. I had never know him before that day.

Q. Well, you recognized him as a man of some experience in the sale or value of such stocks of merchandise? A. Well, I assumed he had that experience and was qualified.

Q. And you believed that he was qualified to speak, and after he had examined the stock, as you knew because you were there— A. Yes, I was there.

Q. (Continued) And had made an inventory of it of some kind— A. If you will note, attached to that petition is the inventory.

996 Q. That is right. The whole thing had been listed and set out here in two columns. Right? A. That is right.

Q. Now after that work had been done the auctioneer expressed his opinion which you accepted as honest and reflected that opinion in that figure of $1500 that you swore to in this petition; right? A. He told me the value of $1500 and I put that in my petition.

Q. I say you accepted this as the real and honest value? A. I never—

Q. For the purposes of the petition? A. I never thought about it at all. I just asked him what figure I should put

in there, what he figured that merchandise was worth, and 997
he told me $1500 and I put it down there.

Q. Now that— A. Of my own knowledge I didn't know how much that was worth.

Q. All right. That bond was never increased, was it? A. No, it was not.

Q. And the petition was made on March 24, which was the same day that the letter went out to creditors, is that right? A. That's right.

Q. And the same day that the order was— A. Which letter are you referring to? Is that the letter to the creditors?

Q. Yes, the March 24th letter. A. There were several 998
papers, I think, that accompanied that letter.

Q. There was a notice of sale? A. A notice of sale and, I think, a notice of meeting too.

Q. Well, that was after Goldman had come in on the 24th and asked you to send a notice to creditors of a meeting? A. Well, he didn't ask me. I didn't speak to Goldman.

Q. You weren't going to call any meeting until Goldman put in an appearance, were you? A. That's right, I wasn't going to.

Q. And you had heard nothing of any meeting being called until Teddy Goldman got in touch with your office, 999
had you? A. I hadn't known of any meeting. Mr. Hoffman apparently was taking care of—I didn't know of any conversation with Teddy Goldman. I never had a conversation with him.

Q. But you were preparing these papers on that day, weren't you? A. Yes.

Q. The petition and the order and the retainer; you remember they were dated the same day? A. I think I prepared that too.

Q. And apparently done on the same machine? A. That is right.

1000 Q. And then on the same day the letter was mimeographed over in Wishbaw's office? A. That is true.

Q. Is that right? A. That is right.

Q. And you were attending to all that, weren't you? A. Yes, I was.

Q. And that all occurred two days after the assignment was dated March 22, March 24th? A. That occurred on March 24, I think.

Q. Yes. Two days after, the assignment? A. I didn't accept that assignment until the 24th.

Q. Oh, didn't you? A. I think that is when I signed it, on the 24th, and it was acknowledged on that date.

1001 Q. You are right, you are right. Acknowledged by Hymowitz on the 22nd and by you on the 24th? A. On the 24th.

Q. That is right? A. Yes.

Q. So that here on this March 24th you accept the assignment, you get up the petition and order for a sale, you get the order for the sale signed and the bond fixed on that date, right? A. That's right.

Q. And you get up a letter to creditors and have it mimeographed and send it out on the same day, the 24th, together with a notice of the sale; right? A. That is—that was done.

1002 Q. All that was done without any consultation with creditors as to the dates of the sale, wasn't it? A. My purpose in accepting that trust was for the benefit of the creditors and I thought if I could get a speedy sale it would save insurance and rent where the goods were located.

Q. But did you or Mr. Hoffman, to your knowledge, communicate with any creditor prior to the time of either fixing the date for the sale or deciding to apply for an immediate sale? A. Well, as I understand—

Q. Did you communicate with any creditor before that? A. I didn't communicate with any creditor.

Q. And he did not so far as you know, did he? A. Well, 1003
I think they communicated—some communicated with him. Some people communicated with him, I think.

Q. All right. But I say— A. And I was at all times willing to tell them the—

Q. All right. A. —what the estate consisted of.

Q. But I want to this picture straight. Here on the 24th you accept the assignment; you get all these papers up and the notice out to creditors, and get a sale directed and a bond fixed and a sale notice sent out to creditors, all on that same day? A. That's true.

Q. Without any prior effort to get in touch with a single creditor, is that right? A. For what purpose? 1004

Q. For any purpose. A. I was interested in administering the estate, and my duty was to turn that into cash, liquidate it for the benefit of creditors.

Q. Perhaps you don't understand me. As to when the sale should be had, as to whether it should be had in bulk, as to whether it should be had in an assignment proceeding, as to who should have notice of it, as how it should be advertisied, as to who the auctioneer should be; none of those questions were submitted to a single creditor, were they? You went ahead without talking with any one of them? A. It was already an assignment proceeding and I 1005
think the regular procedure there is to prepare an order of sale.

Q. Well, irrespective of regular procedure— A. Advertise in the Law Journal, appoint an auctioneer.

Q. Tell me, had you talked with a single creditor or given a single creditor a chance to sit in and talk with you before you got out any of these papers on the 24th? A. Well, isn't that the purpose of ten days difference between the time the order is procured and the time it is advertised for sale?

Q. Will you, instead of asking me, just answer my ques-

1006 tion. Did you do all this and get the sale set and the auctioneer hired before you had talked with a single creditor as to any of those matters of interest? A. I didn't talk to any creditor.

Q. Did you get any inventory from Mr. Rich? A. I did not.

Q. Do you know who he is? A. I never heard of any inventory from Mr. Rich and I never heard Mr. Rich until you mentioned it today.

Mr. Corbin: All right, that is all.

1007 The Court: Any redirect?

Redirect examination by Mr. Schachner:

Q. Did you follow the regular procedure as you understood it to be required in the case of an assignment, and did you insert the notices in the Law Journal for ten days or twenty days, whatever period it is, so that creditors could get in touch with you? A. I tried to the best of my ability to follow the regular procedure.

Mr. Schachner: That is all.

Mr. Corbin: That is all.

1008 (Witness excused.)

SAUL DUNN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Dunn, did you work for Gabriel Wishbaw during March, 1937? A. Yes, sir.

Q. That was in connection with a general assignment for the benefit of creditors in the case of one, Paul Hymowitz, and a proposed auction sale of the assets of Paul Hymowitz? A. Yes, sir.

Q. What were your duties with respect to the assets 1009
contained in the store at 346 Bowery? A. Well, I worked as a lotter. A lotter is a man who prepares the inventory, preparations for a sale.

Q. After you had made that inventory and had made the preparations for the sale did you estimate the value of the merchandise in the store? A. I estimated the value the night previous to my lotting, which I was called by Mr. Hoffman and Mr. Wishbaw.

Q. What was the value at which you estimated the merchandise to be? A. Well, when I went through it I started on one end of the shelf and worked myself all the way around, and I approximated the value at $1800 to bring 1010
at auction.

Q. That would be the auction price? A. Well, I estimated it would bring about that.

Q. Did you also make an estimate of the cost price? A. Well, I don't know the cost price of merchandise. I only estimated what I think it's going to bring at an auction sale.

Q. Can you tell us whether the same stock sold in bulk would bring more or less than at an auction sale? A. Well, I don't know if it would bring more or less.

Q. You cannot tell us? A. I can't tell that. 1011

Mr. Schachner: That is all.

Cross examination by Mr. Corbin:

Q. What investigation, Mr. Dunn, did you make of the stock before you came to that $1800 figure? A. A rough estimation by just going around and feeling the boxes and estimating, to my opinion, what I think it's worth.

Q. Well, that was more or less of a quick once-over, wasn't it? A. That's right.

Q. And you walked in the store and along the sides and back of the counters? A. That's right.

1012 Q. And did you make any count that night? A. No, sir.

Q. Didn't take the stuff out of the boxes and count it or examine it? A. No, sir.

Q. Did you realize at that time that some of the stuff was pretty old? A. Well, I noticed this stock that I go through has obsolete merchandise. I noticed some merchandise obsolete, or old merchandise.

Q. And a lot of the stuff was winter stuff, wasn't it? That was seasonable at the time? A. That's right.

Q. Well, there did come a time when you did some lotting, do you call it, on that merchandise? A. Yes, sir.

Q. That is, during the subsequent days, two or three
1013 or four days you were working there on that merchandise? A. Yes, sir.

Q. And then you did take it down and get it out and examine it carefully and listed it? A. That's right.

Q. And get it ready for sale? A. Absolutely.

Q. Well, sometime during those days after you had a chance to examine it more thoroughly in the daytime you had a change of opinion as to its value, didn't you? A. Yes, sir.

Q. What, after full examination and thought about it and after having seen it and worked on it and worked with
1014 it and listed it, after all that, what was the opinion that you entertained as to what it would be reasonably worth on a sale? A. Well, when I went through it thoroughly and I judged my lots, after it was all fixed up and counted, I thought that I estimated it roughly too high, and I thought it was worth a couple of hundred dollars less.

Q. So you think 15 to $1600 was a fair value? A. That's right.

Q. Rather than the 18? A. That's right.

Q. And you told Mr. Wishbaw and Mr. Hoffman that, didn't you? A. Well, after it was all lotted I knew exactly what I thought it was going to bring.

Q. Yes. I mean when you saw your opinion was too high, you told them it was a little high? A. Yes. That was afterwards. 1015

Q. You told them you thought it ought to be taken at the lower figure? A. That is right.

Mr. Corbin: That is all.

The Court: Any further cross examination?

Mr. Mintzer: No.

The Court: Step down.

(Witness excused.)

GABRIEL WISHBOW, called as a witness on behalf of the Government, being duly sworn, testified as follows: 1016

Direct examination by Mr. Walsh:

Q. What is your line of business, Mr. Wishbaw? A. Auctioneer.

Q. And how long have you been a licensed auctioneer? A. Since 1934.

Q. And prior to 1934 had you been in the same line of business? A. I was.

Q. With whom? A. A firm of A. Joseph & Company and a firm of Harry Rothenberg.

Q. During March of 1937 did you have occasion to meet a man by the name of Mr. Hoffman? A. I did. 1017

Q. And whereabouts did you meet him? A. At Mr. Hoffman's office.

Q. And how did you happen to go there? A. Mr. Hoffman had called me on the phone and said that he had done business with A. Joseph & Company, that he had called that old exchange and was referred to me, and that he had some matter on hand; would I come down to his office to discuss it with him.

Q. And did you go there? A. I did.

Q. And did you have a conversation with him? A. I did.

1018 Q. And after that conversation did you have somebody go down to the store at 346 Bowery? A. Yes. I called—

Q. Who did you have go down there? A. Mr. Dunn.

Q. And what did he do there? A. Made a rough inventory and appraisal.

Q. And do you remember how much Mr. Dunn told you the inventory was at that time? A. About $1800.

Q. And the next day did you go any place with Mr. Hoffman? A. Yes.

Q. Where? A. I went to the general creditors' meeting at 175 Fifth Avenue, at the Association.

Q. And who was present at this meeting, whomever you
1019 remember? A. Well, there was Mr. Kandell, Mr. Phillip Cohen, Mr. Goldstein, Mr. Morton Goldman—I believe there were three creditors, Mr. Hoffman and myself.

Q. Now, incidentally, how long have you known Morton Goldman, one of the defendants? A. Well, I don't know him personally. I hadn't known him personally, but I knew of him, well, for some years back.

Q. When you were connected with Joseph & Company, is that what you mean? A. That's right.

Q. And Mr. Goldman had used Joseph & Company? A. That's right.

Q. And they were auctioneers too? A. That is correct.
1020 Q. How long have you known Kandell? A. Well, I should say approximately the same time I have known of him.

Q. Through Joseph & Company? A. That is right.

Q. And had Mr. Kandell used Joseph & Company, the auctioneers? A. I think he had on occasion.

Q. But neither Kandell nor Morton Goldman had hired you? A. No, they hadn't.

Q. Now, at this meeting will you tell the Court and jury briefly what happened there. A. Well, at the meeting—

Q. And what your purpose was there. A. Well, Mr. Hoffman suggested that I go to the meeting with him to

answer any questions that may be put to me regarding the 1021
value of stock or the type of stock on hand.

Q. And you were prepared to answer those questions? A. Yes.

Q. Had you gone down to the store yourself? A. Yes, I was down to the store.

Q. For examination? A. I was.

Q. And did you agree with Mr. Dunn that the value was $1800? A. Well, approximately that figure.

Mr. Corbin: I object to it, what he agreed with.

The Court: I will sustain the objection as to the agreeing. 1022

Mr. Walsh: I will withdraw the question.

Q. What was your explanation of the valuation of the articles in this store? A. Well, just judging with the eye I should say around 17 or $1800.

Q. And how long did you judge with the eye? A. Oh, not very long.

Q. Approximately how long? A. Perhaps a half-hour.

Q. And during the course of this meeting what happened, if anything, so far as Morton Goldman is concerned? A. Well, briefly, at the meeting Mr. Hoffman presented the situation regarding the assets and liabilities and first pro- 1023
posed to go through the assignment proceedings and liquidate the merchandise stock on hand at public auction through me as an auctioneer. At that time creditors who were present raised an objection to the assignment because of its lengthy procedure and costly procedure and suggested that some other manner be found in which to handle this matter, and suggested a bulk sale. During the course of this—

Q. In the event that there was a bulk sale would they have used you, sir? A. No, there would be no occasion for an auctioneer.

1024 Q. After this suggestion for a bulk sale what happened, if anything? Did you leave the room? A. Yes.

Q. With whom? A. Mr. Hoffman and myself left the room. I think we were out—

Q. Did you leave the room at anybody's suggestion? A. I think Mr. Goldman asked—

Q. Which Goldman? A. Mr. Morton Goldman, I think, if we wouldn't mind retiring for a few minutes.

Q. And did you go out of the room? A. I did.

Q. With Mr. Hoffman? A. Yes.

Q. And subsequently, did anybody join you outside of the room? A. Mr. Morton Goldman.

1025 Q. And were you present at the conversation between—was a conversation had between Mr. Hoffman and Mr. Goldman? A. There was.

Q. Did you hear it? A. I did.

Q. What was the conversation? A. Well, a short conversation—

Q. I don't want it short. I want it as fully as you can explain it at this time. A. Mr. Morton Goldman said that he thought it would be best for all concerned to go through with a bulk sale and settlement with creditors, and that it was a shorter way of settling this estate, that creditors would be satisfied by an amount agreeably acceptable to

1026 creditors, in a percentage of settlement and further, that the debtor, Mr. Hymowitz, would be able to secure general releases for the balance of his debts, and in addition thereto, neither Mr. Hoffman or myself would suffer by any loss of fees, that we would be compensated just the same.

Q. Well, go ahead. A. That the idea behind it would be to secure a buyer, and after taking the highest offer that could be gotten privately, and use those funds for the purpose of settling with creditors, and in addition thereto, take care of the administration fees in which Mr. Hoffman, myself and Mr. Morton Goldman and Mr. Kandell would be able to share.

Q. Were there going to be two prices, did I understand you correctly, one which would be told to the creditors? 1027

Mr. Corbin: Oh no; I object to it.

Mr. Walsh: I did not understand that.

The Court: Yes. I sustain the objection as leading. Let the witness testify.

Q. What was the conversation so far as what the price was going to be as told to the creditors? A. There wasn't any particular price mentioned at that time. As a matter of fact, I remember asking—answering one of the creditors and telling him that the men were—

Q. I would like you to confine yourself to the conversation with Mr. Goldman. What was his plan at that time? 1028

Mr. Corbin: I think he ought to be allowed to finish the answer that he started.

Mr. Walsh: Well, he is talking now about the meeting inside the room, as I understood it. If I am in error—

The Court: Answer the last question asked.

Confine his answer to the conversation had between Mr. Goldman and Mr. Hoffman in the hall.

A. There wasn't any particular amount specified as to what they would obtain, but the idea was to obtain a purchaser who would pay an amount sufficient to settle with creditors and in addition, administration fees and disbursements. 1029

Q. Anything else said? A. No, I don't believe there was anything further than that, except to give the matter some thought, out in the hallway.

Q. This was under the bulk sale, isn't that correct? A. That was under the bulk sale.

Q. Well, I asked you before whether or not you would be out if a bulk sale was consummated. A. Oh yes, definitely.

1030 Q. Now does that refresh your recollection as to what was said concerning what part you would get? A. Well, again there was no figure, but that I would be allowed a fee.

Q. By whom? A. Well, out of the proceeds.

Q. You weren't entitled to a fee, were you? A. Well, I would be entitled to a compensation up to the amount of services rendered up to that point.

Q. Was there anything else said in the hall between or among Mr. Hoffman, Mr. Goldman and yourself? A. Insofar as the conversation with Mr. Hoffman in the hall, I don't recall anything further.

Q. Was anything said about the creditors? A. Yes.

1031 After we were—well, we went back into the meeting room, and I think it was decided by Mr. Hoffman out in the hall prior to that time that he would give the matter some thought, and we went back into the meeting room at which time arrangements were made as to provide hours for the purpose of inspection, that anybody present or who knew anybody that might be interested in the purchase of the stock, and I think there were three or four hours arranged for such purpose.

The Court: Gentlemen, I believe this is a very good place to quit now. It is almost 4:30.

1032 (Discussion off the record re adjournment.)

The Court: Very well. We will recess this case until 1:30 tomorrow.

(Adjourned to July 19, 1940, at 1:30 P. M.)

UNITED STATES OF AMERICA

—against—

MORTON GOLDMAN, et al.

New York, July 19, 1940.
1:30 P. M.

TRIAL RESUMED. 1033

GABRIEL WISHBOW, resumed the stand.

Mr. Walsh: May the record indicate that all of the defendants are in court.

Direct examination continued by Mr. Walsh:

Q. Mr. Wishbow, at the close of yesterday afternoon's session I believe you were testifying or were going to testify that after you had a conversation with Mr. Hoffman, Mr. Morton Goldman and yourself in the hall, that you then went back into the room where the creditors were? A. That is right. 1034

Q. Will you continue from there, sir? A. At that time arrangements were made for the purpose of permitting an inspection of the premises of the debtor and, if I recollect correctly, I believe I made notations of various hours that persons were supposed to be present for the purpose of making this inspection. And shortly thereafter the meeting adjourned.

Q. After the meeting adjourned did you, Hoffman and Mr. Goldman stay around for any length of time? A. I think for a short time thereafter. 1035

Q. Was anything else further said at that time? A. Yes, sir. With further regard to having Hoffman fall in line with the suggestion of a private settlement.

Q. And what was said? A. Well, at that time it was thought that that method would prove the most satisfactory one to all concerned, and at that time Hoffman said, "What about the information that I have given on the letter with regard to assets and liabilities? How will that react?" And I think it was at that point something was said—"Well, the creditors will get $10 a piece, and everybody will be satisfied."

1036 Q. Do you remember who said that? A. I think Mr. Goldman—

The Court: Let me ask you right there—was Mr. Kandell in the room at that time?

The Witness: Yes, sir, he was.

Q. And those ten dollars you said was going to be given to the creditors. Who was there—

Mr. Corbin: I object to that, your Honor.

The Court: Objection sustained.

1037 Q. To whom was the $10 going to be given? A. The statement was general that the creditors would get $10.

Q. By that did you understand that all the creditors of the whole assignment were going to get $10 a piece? A. Well, probably I didn't, probably the creditors who were present.

Q. Where was the $10 that was going to be given to creditors to come from? A. I suppose that was to come out of the funds from which we were going to get funds, the second funds.

Q. And the creditors knew nothing about that? A. I don't know whether they did or not.

1038 Q. They were not administration expenses, were they? A. Well, I believe they were termed "administration expenses".

Q. By whom? A. I don't recall exactly.

Q. Administration expenses are put in the final accounting, are they not? A. Referring to the administration expenses of the estate, yes, sir.

Q. And the $10 that were to be given to the creditors are put—

Mr. Corbin: I object to that, your Honor. He is putting words into the witness's mouth.

The Court: Yes. Objection sustained. 1039
Mr. Walsh: I will withdraw the question.

Q. After that meeting—I now call your attention to the one around April 3rd, that was the day upon which the petition in bankruptcy was filed. Do you remember that? A. Yes, sir, I do.

Q. Did you go any place that day? A. Yes, sir, I went down to Mr. Hoffman's office in the afternoon of that day.

Q. And what did you do there? A. Well, Mr. Hoffman told me he had decided to prepare affidavits in opposition to the petition in bankruptcy, and suggested that I call up Mr. Goldman. 1040

Q. Did you call Mr. Goldman up? A. Yes, sir.

Q. Did you speak with him over the telephone? A. I did.

Q. Can you relate to his Honor and the jury what you and Mr. Goldman said on the telephone that day? A. I asked Mr. Goldman whether they were going to make an application for a receiver or stay the sale—

Mr. Walsh: May I interrupt you here.

Q. Which Mr. Goldman is this? A. Morton Goldman. He told me that he didn't know what if anything that was 1041
going to be done with it, that he had nothing to do with it. I told him I thought this petition—because Mr. Hoffman was making affidavits of his own relating to the entire transaction—that I was going to oppose it. He told me he knew nothing of the suggestion of the bulk sale, had nothing to do with it, or the petition or anything else. I told him I had been present at the time the bulk sale was discussed. He told me he had nothing to do with the matter, and he told me to stop annoying him, and hung up.

1042 Q. And subsequently did you go to the Court when an argument was being had? A. Yes, sir.

Q. After you appeared before Judge Coxe, if I remember correctly? A. Yes, sir.

Q. And after the proceedings before Judge Coxe did you leave the courtroom? A. Yes, sir.

Q. And did you have a conversation with anybody at that time? A. Well, on leaving the courtroom—I believe it was Mr. Schulman came over to me and asked me, "What was the matter with Mr. Hoffman?" I told him, "Don't discuss that with me. Anything you want to take up with him, talk to him about it."

1043 Q. What happened? A. We went across to Mr. Schulman's office, Mr. Schulman and myself.

Q. Did you go into the office? A. No.

Q. What did you do? A. I was in the outer room.

Q. And you waited there? A. I did.

Q. Subsequently did you have various conversations over the telephone with Mr. Schulman? A. I can't recall that exactly. I may have.

Q. Did you have any conversations with him? A. I may have.

Mr. Walsh: That is all. Your witness.

1044 Cross examination by Mr. Corbin:

Q. If I can refresh your recollection about the "$10 a piece" to the creditors, isn't it a fact that what was said about $10 on March 25 there was that if Hoffman's proposal went through with the assignment, the delay and the expense of the proceedings under the assignment for the benefit of creditors, that most of these creditors would not get $10 a piece or that they would be lucky if they did get $10 a piece? A. Well, that was said at the early part of the meeting, I believe it was. I don't know whether

it was $10 but that they wouldn't realize very much out 1045
of it under the assignment proceedings.

Q. And wasn't there a repetition of that mention of $10 later after the meeting broke up? A. I can't recall that.

Q. Whether it was that that was said in connection with the mention of $10 or not at the later conference you can't tell one way or the other, is that right? A. I don't believe I can.

Q. You don't know? A. (No response.)

Q. You are not sure one way or the other? A. I am not sure which—whether it referred to that.

Q. Well, you did not hear any suggestion on the part 1046
of anyone that a creditor who had, let us say, a claim of $150 or $250 would only get $10 or would get $10 from somebody? A. No, I don't believe there was any specification of any particular creditor.

Q. There had been talk earlier and the talk may have continued in the later conversation that if this thing went through the way Hoffman had it planned, creditors or some of them, wouldn't get $10 a piece on their claims? A. Yes.

Q. Isn't that right? A. That was at the preliminary meeting, at the early stage of the meeting.

Q. And whether that continued or was referred to again 1047
in the later ones, when the $10 was mentioned, you don't know one way or the other? A. I am not quite sure whether it referred to that.

Q. Well, now you say that after the meeting inside with the creditors had gone on for some time someone requested Mr. Hoffman and you to leave the room? A. That is correct.

Q. Was the assignee, Kolman, present at that meeting? A. No, he was not.

Q. Well, you were identified at the meeting as the auc-

1048 tioneer whom Mr. Hoffman had employed to conduct the sale, were you not? A. [illegible] Mr. Kolman employed, yes.

Q. Yes. Now you have attended a good many creditors' meetings in your experience? A. I have attended several.

Q. Isn't it quite customary, at least can you say that there was nothing unusual from your experience, about the creditors asking the assignee to leave the room while they discussed something amongst themselves? A. No, that part is not unusual.

Q. And that part of asking you and Hoffman to leave the room where the creditors were meeting in did not strike you at the time as being unusual, did it? A. No, it did

1049 not.

Q. And so Mr. Goldman came out after a while into the other room and talked with you and Hoffman? A. Yes, he talked with Mr. Hoffman.

Q. In your presence? A. That is right.

Q. You heard what was said, didn't you? A. Yes, I did.

Q. And in that talk was there anything at all said about a sale being had for one price which would be kept secret from the creditors, and another price being revealed to the creditors on the basis of which the money would be

1050 divided among them? A. No, there wasn't any specification as to prices one way or the other.

Q. And there was no mention of there being two prices: One a secret price and one a price that was open and revealed, was there? A. No, I don't believe there was.

Q. Now your recollection is clear of that conversation, isn't it; fairly clear? A. Pretty clear.

Q. And isn't it a fact that not only during the meeting inside but during the talk outside the creditors and Mr. Goldman were proposing and were urging upon Hoffman and upon you that the creditors be given a net of 40 per cent by way of a bulk sale or a private sale? A. I don't

recall the specified percentages but they were urging a 1051
settlement by means of a bulk sale.

Q. And they were, were they not, objecting to the expense of a public sale under the assignment proceedings? A. That's correct.

Q. With the attendant delay? A. That's right.

Q. Didn't they say it was a small matter and that they ought to get the best price they could, a fair price, and divide it up with the least possible expense and get their money? A. That was the substance of it.

Q. Instead of waiting for this accounting and all the necessary delay attendant upon an assignment proceeding? 1052
A. That's right.

Q. Your experience has taught you that there is a consequent and necessary delay in connection with assignment proceedings? A. Of course.

Q. And bulk sales usually result in much earlier dividends to the creditors? A. That's true.

Q. And no one disputed those facts there at that conference, did they? A. No, they didn't.

Q. So that the effort was to reach a figure, if I may summarize what I understand you to say, was to reach a percentage figure that the creditors would get net to themselves and which would leave a balance which could go for 1053
administration expenses, that is, it would pay you for what you had done and pay the lawyers something and the assignees something? A. Well, that's true, as administration expenses; yes.

Q. And to pay the lawyers something? A. Yes.

Q. And Goldman thought that he should receive something as well as Hoffman, didn't he; at least he so expressed himself? A. Well, he expressed himself as to being desirous of earning a fee, yes. In that manner, that he would get a fee and Kandell would get a fee out of it and we would get our fees just the same.

1054 Q. In other words, the fees weren't to be large or were to be secret or were to be divided up by reason of some secret price to be obtained from some purchaser, was there? A. There wasn't any necessary specification as to prices or amounts to be divided or anything else.

Q. And whereas there had been talk earlier that the creditors might not get $10, some of them, or 10 cents on the dollar if Hoffman went through with this plan, that if they could agree on some fair amount for the creditors which would leave something for everybody to take care of you and the lawyers and so forth, that that was the expeditious and the fair and the best way to handle it?
1055 A. That was the opinion voiced, yes.

Q. Now is that the sum and substance, the real, honest substance of the whole talk inside and outside of the room at all times? A. Yes, I believe that would be.

Q. Nothing there that you objected to; nothing occurred in your presence that you resented or thought was dishonest, was there? A. No. At that point I can't say so.

Q. And when they got down before Judge Coxe you were there, weren't you? A. That's right.

Q. At that time Hoffman told Judge Coxe that Goldman was trying to stop the assignment sale and interfere with the progress of the assignment proceedings, didn't he? A.
1056 Mr. Hoffman went through the entire thing from beginning to end—I believe it was testified to here; he had previously, all the way down the line, regarding Mr. Goldman and the meeting and so on, went all through it.

Q. Yes, but he did not tell Judge Coxe at that time that there was any secret price, did he? A. I don't know whether he said anything about a secret price.

Q. No. He did say that Goldman was trying to chisel in on his assignment proceeding, didn't he, in substance? A. Something like that, yes.

Q. And did you say anything before Judge Coxe? A. No, sir. 1057

Q. And were you over in Schulman's office when Goldman came in and told Hoffman that he lied about him trying to chisel in on the assignment proceedings? A. No, sir, I wasn't there.

Q. Did you ever hear Goldman at any time or place say anything to the effect different from his trying to do the best for the creditors? A. I did not.

Q. Now, in the telephone call Goldman said that he did not have anything to do with the matter. That was the bankruptcy? A. That is what he told me over the phone.

Q. Goldman wasn't at the bankruptcy hearing, was he? 1058
A. No, he wasn't.

Q. Do you recall whether he said that his brother Teddy might have had something to do with that but not he personally? A. No, I do not.

Q. Just one other question. Auctioneer's commissions for services, such as you were to perform, are usually 10 per cent, aren't they? A. Yes, sir.

Q. And that was your arrangement with Hoffman from the beginning, wasn't it? A. That is correct.

Q. In connection with the Hymowitz matter? A. That's right.

Mr. Corbin: That is all. 1059

Cross examination by Mr. Fielding:

Q. You were present all through the discussion before Judge Coxe? A. I was.

Q. And besides Mr. Schulman, Mr. Hoffman, there were two creditors represented by Mr. Schulman present, weren't there? A. I believe there were.

Q. Now do you remember what Schulman told Judge Coxe in support of his application to stay the sale? A. Not exactly, but —

1060 Q. I don't mean exactly. A. (Continued) That he had represented these two creditors for several years in the past and that they wanted the sale stopped in this matter, and that he filed a petition of their claim.

Q. And Judge Coxe, to be perfectly sure, knowing the creditors were present, that that was the attitude of creditors, interrogated the creditors themselves, did he not? A. That's right.

Q. And what did each of these creditors tell Judge Coxe? A. That they didn't want the sale to take place.

Q. They didn't want the proceedings to go along under Hoffman? A. That's right.

1061 Q. They didn't want any sale under an assignment? A. That is correct.

Q. Is that correct? A. That is correct.

Q. And did Judge Coxe then say that he would bow to the creditors' wishes, that they were the people who own the estate and they were the ones to be consulted? A. He did.

Mr. Fielding: That is all.

Cross examination by Mr. Mintzer:

Q. Mr. Wishbow, did you have any conversations with 1062 Kandell during the pendency of the Hymowitz case? A. I don't believe I did.

Q. The Judge asked you before whether Mr. Kandell was present in the room. Do you or do you not mean the room where all the creditors were present? A. Yes, that is right.

Q. About how many people were there at that time, altogether? A. Well, about half a dozen of us, I should say.

Q. And this talk whether the creditors could realize $10 on their claims or not took place in that room where

all the people were present? A. Yes, at the very beginning of the meeting. 1063

Mr. Mintzer: That is all.

By Mr. Corbin:

Q. There has been some talk here, Mr. Wishbow, to the effect that the $1500 figure fixed in the petition of Mr. Kolman for the bond and for the sale came from you as a reasonable estimate of the value? A. Yes.

Q. Of the stock? A. That was my suggestion.

Mr. Corbin: That is all.

The Court: Any redirect? 1064

Mr. Walsh: I am going to ask your Honor for a little latitude at this time.

Redirect examination by Mr. Walsh:

Q. Do you know what a flip-flop is?

Mr. Corbin: Well, is he talking about the circus now?

Mr. Walsh: Yes, a turn-about.

Mr. Corbin: Well, it sounds like counsellor is turning about.

The Court: Very well. Do you object to that question? 1065

Mr. Corbin: Yes.

The Court: I will sustain the objection, so that you may proceed.

Q. On your direct examination, if your redirect is correct, why did you tell Mr. Goldman that he was lying when you spoke to him over the telephone when you recounted to him the conversation that was had at the first creditors' meeting? A. Because I was present at the time the bulk

1066 sale and private sale were discussed out in that hallway, and that it was his suggestion that Mr. Hoffman follow along those lines.

Q. And what lines were those? A. To go through with this private sale, obtain the buyer.

Q. And after they got the money in this private sale, how was that money to be distributed? A. Well, creditors were going to get a settlement and in addition thereto, we were going to get fees out of it.

Q. All from this one private sale? A. From the entire sale, yes.

Q. Were the creditors going to be told exactly the amount
1067 of money that they obtained at this private sale? A. That wasn't mentioned.

Q. Well, you were present; you understand the English language, don't you, Mr. Wishbow? A. I do.

Q. And was it usual for Mr. Goldman to come out after he asked you to come outside of the room and make such a proposition to you?

Mr. Fielding: I object to that question.

The Court: I will overrule the objection.

Q. Was that the usual thing to do or an unusual thing
1068 to do? A. Well, I can't say that it was unusual when they want you to follow along some lines that they suggest you take. That part—

Q. Did you consider it a legal way of doing things? A. A legal way?

Mr. Fielding: I object to that as calling for a conclusion of the witness.

The Court: Yes. I will sustain the objection to that.

Q. Did you say you would go along with Mr. Goldman? A. I ventured no opinion at all throughout.

Q. You just stayed there and listened? A. That is right. 1069

Q. Do you remember on direct I asked you whether or not you did not appear at Mr. Hoffman's office and was there when he dictated certain affidavits which were going to be submitted to the Court in order to have the sale proceed? A. Yes. He was—he had them. I don't recall just when that was.

Q. Now I show you this affidavit and ask you whether or not you recognize having read that over (handing witness). It isn't signed. Do you remember being up in Mr. Hoffman's office and is that the affidavit that you testified on direct that was signed or that was prepared at that occasion? A. Yes. I believe this—well, there was 1070 an affidavit that I did sign setting forth the manner of disbursements.

Q. Well, I am asking you now whether or not you remember being in Mr. Hoffman's office and being there when that affidavit I now show you was prepared. A. I was in his office at the time he prepared the affidavits regarding this, yes.

Q. And you also were there when he prepared his own affidavit, were you not? A. I wasn't there at the actual preparation. I mean he had called me down and told me that he was preparing affidavits, and as a matter of fact, 1071 I brought down the disbursements that I had rendered up to that time for the purpose of drawing my affidavit.

Q. And you read the affidavits over too, didn't you? A. I believe I saw his affidavit.

Mr. Walsh: Mark this for identification.

(Marked Government's Exhibit 16 for identification.)

Q. As a matter of fact, this affidavit which I have just

72 shown you and at which you say you were present is—and correct me if I don't read correctly—

Mr. Corbin: I object to that as immaterial, incompetent and irrelevant. In the first place, he hasn't said that he was there when it was prepared.

Mr. Walsh: He testified he read it.

Mr. Corbin: Even if he did it wouldn't be competent to read it; in the third place, the document hasn't been offered in evidence.

Mr. Walsh: I have marked it for identification.

Mr. Corbin: So I am going to object to it, and
73 in the fourth place, the paper isn't signed anyway, apparently. We have never seen it.

The Court: Gentlemen, I believe at this point I ought to determine the competency of this examination. I am going to hear it out of the presence. I will let the jury retire for a few minutes. If it is competent I will submit it in the presence of the jury.

(The jury left the courtroom.)

The Court: Let the record show, Mr. Stenographer, that the examination now is being taken out of the presence and hearing of the jury.

74 Mr. Walsh: If your Honor please, I respectfully submit that on direct examination this witness testified one way and on redirect he absolutely turned around the other way.

The Court: Now that is the reason—

Mr. Walsh: And I am surprised.

The Court: —I let the jury retire.

Mr. Walsh: I understand.

The Court: You may proceed with the examination, and if that be true or if you claim surprise at his testimony, I will let you cross examine him. I will determine it after I hear you.

The Witness: Mr. Walsh, may I see the copies of the affidavits that were in my file, copies given to me by Mr. Hoffman? 1075

Q. Yes. Well, I will show you them in a moment. May I ask you this while we are waiting for that: Am I correct when I said—when I show you this: "The deponent has read the affidavit of Robert Hoffman which is hereto annexed. I have read the statements contained therein which refer to a certain meeting of the creditors held at the office of the Dry Goods Furnishing Association at 175 Fifth Avenue, New York City, on March 25, 1937, and corroborate same insofar as it relates to me, especially as to the conversations had between Mr. Hoffman and Mr. Goldman in my presence and also in respect to the conversations had amongst Mr. Kandell, Philip Cohen, Mr. Samuel Goldstein, Mr. Morton Goldman of the firm of Goldman, Malter & Goldman, Mr. A. Kreiselman, Mr. Schwartz of the firm of Schwartz & Zuckerman and Mr. Ribach of the firm of Ribach & Mantis." 1076

Now does that refresh your recollection that you did appear and read the affidavits which Mr. Hoffman had prepared at the time and corroborated what Mr. Hoffman had said in his affidavit when he was preparing them in order to knock out the petition in bankruptcy which had been filed on that same day? 1077

Mr. Corbin: Now just a moment. I object to it. The paper is an unsigned paper apparently, not that that in itself would make it void as something from which recollection can be refreshed, but the testimony of the witness so far is that it was not prepared in his presence, that Hoffman prepared it and phoned for him to come over, so that the language which was read obviously is not the language of the witness. Therefore, I see in what he has read, in

1078 connection with the surrounding facts of its preparation, nothing which can properly be used in this examination by the Government.

The Court: I will overrule the objection.

Mr. Corbin: Exception.

Q. Is that a fact? A. May I refer to my—

Mr. Walsh: Will you read the question—

Q. I will give you that in a second. A. Well, in order to answer your question, may I refer to my copies?

1079 Q. Well, will you answer the question that I have asked you first? A. Well, that will enable me to answer it.

Q. Does that refresh your recollection concerning the fact that you were there on April the 3rd, 1937, when these affidavits were prepared? A. I was there on April 3, 1937, but I don't recall whether I was there when these affidavits were prepared or whether they were prepared before I came there.

Q. But is it true that you did, even if you weren't there when all of the affidavits were prepared, read the affidavit which was prepared by Mr. Hoffman and in which you said that you corroborated everything that was said by Mr.

1080 Hoffman on that occasion?

Mr. Corbin: Now just a moment. That is what I object to. The witness did not say—

Mr. Walsh: Well, I am asking him.

Mr. Corbin: And this paper does not purport to state that he corroborated everything that Mr. Hoffman said, because this is the paper that the witness did not sign. Therefore, it is not a statement of the witness in any record.

The Court: I will overrule the objection. If it is not he can so testify. As it is, he is asking him.

as I understand the question, if that is so. If it is not, he can so state. Of course if he does not remember he can so state. Whatever he remembers the facts, he will testify to them. I will overrule the objection and let him answer. 1081

A. I don't recall whether that is the affidavit or not.

Q. Well, let me ask you this: Did you read over the affidavit that Mr. Hoffman had prepared on that occasion, on April the 3rd? A. I probably did.

Mr. Corbin: I object to that as already answered.

Q. Did you read over the affidavit? A. Mr. Hoffman's affidavit? 1082

Q. Yes. A. Yes, I probably did.

Q. And did you corroborate everything that was said in Mr. Hoffman's affidavit?

Mr. Corbin: I object to that as calling for a conclusion, not for any fact, not for any conversation.

The Court: I sustain the objection.

Q. Did you on that occasion, after reading over the affidavit of Mr. Hoffman, did that recall to your mind that that which Mr. Hoffman had said in his affidavit had transpired and taken place on that occasion on March 25th? 1083

Mr. Corbin: I object to that as leading and suggestive.

The Court: I will overrule the objection.

A. I believe it referred to the meeting on March 25th.

Q. And that refreshed your recollection? A. Yes, probably did.

Q. Is that correct? A. That is correct.

Mr. Walsh: I will have this marked for identifi-

cation, Mr. Corbin, so that there won't be any question about it.

(Marked Government's Exhibit 17 for identification.)

Mr. Corbin: What is that that you marked 17?

Mr. Walsh: This is the affidavit of Samuel Kofman.

Mr. Corbin: Verified when, Mr. Walsh?

Mr. Walsh: Just a second—and the affidavit of Robert Hoffman, consisting of 13 pages, unverified, and an affidavit unverified of Gabriel Wishbow, which is what I am speaking about.

Mr. Corbin: Are any of those signed?

Mr. Walsh: None of them are signed. I am just asking him now if this refreshes his recollection.

Q. And there is no question now that you were there and you read the affidavits as prepared by Mr. Hoffman?

Mr. Corbin: Now just a moment. I couldn't even hear that question. But if I understood it, it was that there was no question—

Mr. Walsh: The fact that he was there and read the affidavit of Mr. Hoffman.

Mr. Corbin: I thought you said that there was no question that he was there when they were prepared.

Mr. Walsh: No, I didn't say that.

Mr. Corbin: Well, that is what I thought I heard.

Mr. Walsh: I will stand back here so that you will hear better.

Mr. Mintzer: May I object to the use of the word "affidavit". It isn't an affidavit. It is neither signed nor verified.

The Court: Very well. I will sustain the objection 1087
to that. It will be referred to as a document.

Mr. Walsh: Call it p-a-p-e-r, paper.

Q. You remember, Mr. Wishbow, reading the paper prepared by Mr. Hoffman, in which he states: "I respectfully call the attention of the Court that the assignor Paul Hymowitz is now an inmate of the penitentiary at Riker's Island. He was sentenced and confined to jail on or about March 18, 1937." Do you remember that? A. I know the facts as to Paul Hymowitz I would say, without coming out of that. I know the story of the case.

Q. That is true? A. Yes, sir. 1088

Q. And then again "Under the circumstances it was the desire of Paul Hymowitz to see that his creditors receive the utmost and maximum from the estate." You remember that? A. Yes, sir.

The Court: Mr. Walsh, I allowed the jury to retire for the purpose of determining if any of you were taken by surprise and whether or not there was such a variance between his testimony and what you understood from him prior to his testifying, so as to give latitude on cross-examination. Wherein do you claim you are entitled to cross-examination 1089
of this witness?

Mr. Walsh: He testified on cross-examination that he was going to be paid out of the general administration expenses.

The Witness: I beg your pardon. I didn't refer to that.

Mr. Walsh: On cross-examination he did, if your Honor please. He also said about $10 going to creditors. There was a discussion concerning the $10, that is all the creditors would get; whereas, on direct, he testified the $10 was going to be given to

the three creditors in the room there for the purpose of alleviating their feelings. They had heard that Mr. Hoffman intended to give them 80 percent, and on cross-examination he said: Was something said about all the creditors that they were going to get $10? And that is all.

Mr. Mintzer: I submit there was no testimony on direct examination of Mr. Wishbow "for the purpose of alleviating their feelings". That was what this witness testified to Mr. Corbin.

Mr. Walsh: And turning his testimony diametrically to what he testified on direct.

The Witness: I beg your pardon, Mr. Corbin referred to what came up at the meeting.

Mr. Walsh: I said that was preliminary, prior.

The Witness: You did.

The Court: I recall his testimony on direct examination and I am almost sure that a statement was made that those creditors in there would be given $10 but not all of them getting $10 was not asked, nor was he asked if that applied to all creditors. He testified on direct examination so far as he recalled he heard no conversation out in the hall or any other place that there was to be a secret price to be paid for the goods different from the one that was to be actually paid out. I was watching his testimony closely and that was his testimony. So I do not think there is a great amount of variance on direct and his cross examination. His cross examination has gone into fields somewhat different from those on the direct examination.

Mr. Walsh: If your Honor please, I was ready and prepared to ask him—

The Court: You can proceed a little further in the absence of the jury.

Of course, the rule of law is if you are taken by surprise on a point that you are not supposed to know anything different about it, if there were such a variance shown, a wilful change, then you are entitled to read to your witness, but if on cross examination matters favorable to a party, that doesn't give you the right to contradict him unless there is a surprise about matters which you could not have anticipated that his testimony would have been as it is but, on the contrary, from your conferences with him or prior statements with him, you had a right to rely that his testimony would be different from what it is. 1093 1094

Mr. Walsh: The reason that I claim surprise was that he testified in answer to Mr. Corbin's questions that the $10 that was mentioned when they, Hoffman, Goldman and himself, were present, not to be given to the creditors as their final settlement.

The Witness: That is right.

Mr. Walsh: And that was discussed; whereas, on direct examination he said that those $10 was going to be given out to the creditors present at that time, because they had heard this was a big estate and they expected to get quite a bit of money.

The Court: It is my recollection he testified to that on direct examination. 1095

Mr. Walsh: That is correct. Now on cross examination he changes his testimony in what point—

The Court: Have you a transcript of the testimony?

Mr. Corbin: We have a transcript of yesterday's testimony.

The Court: My recollection is that it was in response to a question by the District Attorney that he answered the creditors there would get $10, to say nothing about it, or something to that effect.

1096 Mr. Walsh: That was today.

The Court: Did you testify to that on direct examination?

The Witness: Yes, sir. I believed that the creditors would get $10 a piece, those creditors who were present.

Q. And what was the purpose of it? A. The purpose was not expressed. I said Mr. Hoffman raised the question. I had alleged certain facts regarding the assets and liabilities and percentages, that is where it came up, that is the way it was.

1097 Q. What did Mr. Goldman say? A. There was nothing labeled about it. That was in response to Mr. Hoffman while this is going through on a percentage, and just the way that they would get $10 a piece. That is the time.

The Court: I am going to rule you cannot cross examine the witness, but you can go back on redirect.

Let the record show that this testimony has been taken up to this time in the absence of the jury.

Bring the jury in now.

(The jury returned to the courtroom at 3:25 p. m.)

1098 By Mr. Walsh:

Q. Mr. Wishbow, on redirect examination you were asked by Mr. Corbin concerning the $10 that was going to be given to the creditors, is that correct? A. Well—

Q. He asked you that, did he?

Mr. Corbin: On cross examination, not redirect.

A. I believe Mr. Corbin, to the best of my recollection, said, Wasn't there a talk about $10, or something, that the creditors would say they might or might not get. I don't believe

that was the $10. Wasn't there talk at the meeting about creditors getting $5 or $10? 1099

Q. Was there such a talk? A. I said at the preliminary meeting under the assignment; they didn't get very much out of it.

Q. Now specifically confine yourself to the $10 that entered into the conversation, and if my memory serves me correctly, that you were present, Mr. Kandell, and Mr. Goldman and Mr. Hoffman was also present, that is after the meeting had adjourned. A. That is right.

Q. Now what was that $10 for?

Mr. Corbin: I object to that. 1100

The Court: I will sustain the objection.

Q. Was anything said about the $10 at that time? A. Yes, sir.

Q. Will you tell us fully what was said? A. Mr. Hoffman said this is for doing these things, just like that. What about the information I gave as to assets nd liabilities, or the expression a great dividend I might pay out of this thing, and at that time something was said about these creditors getting $10 a piece.

Q. Which creditors? A. The three creditors present at the meeting.

Q. Was anything said as to what the purpose was that 1101
these creditors were going to get $10 for? A. I don't think anything was expressly said.

Q. Now going back to the conversation between Mr. Hoffman and Mr. Morton Goldman, after the meeting of the creditors on March 25, 1937, you said you were going to be paid on that occasion, or did anybody say they were going to take care of you? A. Yes, sir.

Q. Who said that? A. Mr. Goldman.

Q. Now who else was going to be taken care of? A. Mr. Kandell, Mr. Hoffman, myself and Mr. Goldman, four of us.

1102 Q. And how were you going to be taken care of, how were those five individuals going to be taken care of? A. They were going to raise a fund a sufficient amount for creditors, then another fund out of which we were to be paid.

Q. If there was going to be two separate funds, that is all I am asking you? A. Two funds.

Q. Two separate funds, one for creditors and one for you? A. Yes, sir.

Q. And the others that were going to participate? A. Yes, sir.

1103 Recross examination by Mr. Corbin:

Q. One total fund that was received from the assets? A. One total fund.

Q. The money had to come from somewhere, and it was coming from the assets? A. Yes, sir, from the purchaser.

Q. What they were trying to figure out was what would be a fair percentage——

Mr. Walsh: I object to that as calling for a conclusion.

The Court: Yes. Objection sustained.

1104 Q. Wasn't the conversation to the effect that they would figure out what percentage the creditors ought reasonably to have? A. The conversation that was going on then was that a settlement—

Mr. Walsh: May I have what was the specific time and then we won't get into any difficulty any more. Where was this conversation, and between whom?

The Court: You can take him back on redirect to find that out. I cannot direct counsel how to ask his questions.

Q. The talk was just as you told me when I asked you before, when you testified here a few minutes ago, you were telling the truth? A. Yes, sir. 1105

Q. You understood my inquiries? A. Yes, sir.

Q. And what the substance of the talk was they were trying to figure out—

Mr. Walsh: I object to the "substance".

Q. Did you tell me the truth on redirect examination before the jury was excused?

Mr. Walsh: Cross examination, Mr. Corbin.

1106

Q. Cross examination, that is right. A. I did.

Q. Just before the jury went out? A. I did.

Q. Everything you told me was right? A. Yes, sir.

By Mr. Walsh:

Q. And everything you told me when I asked you about the two separate funds was true also? A. Yes, sir.

Q. And about the $10 being given to the creditors to keep their mouths shut?

Mr. Corbin: Did you hear that before today?

The Witness: No, sir.

Mr. Walsh: What was the purpose? 1107

The Court: One at a time. Mr. Corbin is examining the witness.

Mr. Walsh: I am sorry.

By Mr. Corbin:

Q. Was anything said in words or substance at that time about keeping their mouths shut? A. I don't recall that.

Q. Those words, so far as you are concerned and so far as your hearing is concerned, came from Mr. Walsh's mouth right now? A. Yes, sir.

1108 Mr. Corbin: That is all.

The Court: Any further cross examination?

Mr. Walsh: I am just going to ask him one more question.

The Court: Very well.

Q. In these various creditors' meetings much is left unsaid and it is all by gestures, isn't it?

Mr. Corbin: I object.

The Court: Objection sustained.

Stand aside. Witness excused.

1109 ———

ALEXANDER ROTHLEIN, called as a witness on behalf of the government, being duly sworn, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Rothlein, what is your occupation? A. At the present time I am interested in a retail establishment.

Q. What did you do from the early part of 1937 until the latter part of 1937? A. I was practicing public accounting.

Q. And where were you practicing public accounting?

1110 A. At my office, 175 Fifth Avenue.

Q. And was that at the Dry Goods & Furnishings Association? A. Yes, sir.

Q. And do you know Mr. Kandell? A. I do.

Q. Do you stand in any relationship to Mr. Kandell? A. Yes, sir.

Q. What is that relationship? A. My brother-in-law.

Q. Now I show you Government's Exhibit 14-B in evidence in which your name appears here. A. Rothlein. Is that not your name? A. Yes, sir, that is right.

Q. It is a bill of sale, unsigned. I believe, and by it Paul Hymowitz purports to sell merchandise and other

matters to one A. Rothlein. Did you have anything to do with this bill of sale? A. No. 1111

Q. Did you ever have any conversation with anybody about that bill of sale? A. What do you mean?

Q. Well, did anybody ever speak to you about that bill of sale? A. Yes, sir, sure.

Q. Who spoke to you? A. My brother-in-law.

Q. What did he say to you? A. Well, I used to be in and out of the office occasionally at that time and when I was in the office he asked me—

Mr. Walsh: Keep your voice up. I cannot hear you so well. 1112

A. (continuing) At that time he asked me if it would be all right if I would allow him, to permit my name to be used in a purchase of merchandise and a bill of sale. He never mentioned the sum of money, for a buyer by the name of Louis Abramson, an actual buyer. That is all I know about this matter.

Q. What did you tell your brother-in-law, that is Mr. Kandell, when he asked you that? A. I said it was all right. He could use it.

Q. You allowed him to use your name? A. Yes, sir, I allowed him. 1113

Q. Did you ever intend to buy any merchandise by that bill of sale? A. No.

Mr. Schachner: That is all.

Cross examination by Mr. Mintzer:

Q. Did Mr. Kandell tell you that Mr. Abramson had told him that he did not want his own name to be used in the bill of sale? A. He did.

Mr. Mintzer: That is all.

1114 The Court: Any further questions?

(No response.)

The Court: Stand aside. Call Mr. Abramson.

Mr. Walsh: We will defer calling him for a while your Honor.

Mr. Schachner: Call Mr. Bodinger, please.

NATHANIEL BODINGER, called as a witness on behalf of the government, being duly sworn, testified as follows:

Direct examination by Mr. Schachner:

1115 Q. What is your occupation, Mr. Bodinger? A. I am a stenographer for the Federal Bureau of Investigation, United States Department of Justice.

Q. On April 7, 1937, were you in Room 1508 of the building 277 Broadway in the City of New York? A. I was.

Q. What did you do there? A. I was listening to certain conversations and taking notes.

Q. How were you listening to those conversations? A. By means of a listening device attached to a wall in the room and an amplifier.

Q. Where were the conversations taking place to which you listened? A. In the adjoining office.

1116 Q. And you made notes of what you heard? A. I did, that is right.

Q. Now do you remember who was speaking at the time you listened? A. Well, there were different persons speaking on different occasions.

Q. Could you identify the voices you heard on that occasion? A. At that time I probably could.

Mr. Fielding: Could or could not?

The Witness: Could. That is, I could identify some of them definitely.

Q. Whose voice could you identify definitely? A. Robert 1117
Hoffman.

Q. And did you hear any other voices? A. I did.

Q. Did you hear the people in the course of the conversation refer to each other by name? A. I did.

Q. What names were mentioned? A. Schulman and Goldman.

Q. Now could you more or less identify one voice as usually responding when being addressed as Schulman? A. I could.

Q. And could you identify another voice as being—by the way, how many voices were there? A. It seemed to me at the time that there were three at least. 1118

Q. And there is one voice still missing. You have identified more or less two up to now, haven't you? A. That is right.

Q. Can you tell us whether or not, have you any idea who the third voice was? A. Well, that was Goldman.

Q. Now you say you made notes. How did you make those notes? A. I used in taking notes a stenotype machine.

Mr. Schachner: I ask that these be marked for identification.

(Marked Government's Exhibits 18, 19, 20 and 21 for identification.)

1119

Q. I show you Government's Exhibits 18, 19, 20 and 21, marked for identification, and I ask you whether you find among these exhibits the original notes which you made on April 7, 1937? A. That is right.

Q. Which one of the exhibits is it? A. This one (showing).

Mr. Schachner: Let the record show that the witness identified Government's Exhibit 21 marked for identification as the notes made on April 7, 1937.

Mr. Corbin: Why don't you cut it short and get the transcript in. No objection.

120 Mr. Schachner: I offer these in evidence.

Mr. Corbin: When I say "no objection" I am not objecting to the form of the proof. I don't know what they contain, but my point is if we get the stenographic transcript we can read it and see what we are talking about.

The Court: At this time I will overrule the objection and let the original notes go in, and when they are read or the entire exhibits are read you can object at that time.

Mr. Corbin: I didn't mean to object. I meant to try to facilitate the offer.

121 (Marked Government's Exhibit 21-A for identification.)

Q. Mr. Bodinger, I show you Government's Exhibit 21-A marked for identification and I ask you whether this is a correct transcript, prepared by you of the original notes, which you made and which you just identified? A. That is so.

Mr. Schachner: I offer them in evidence.

Mr. Corbin: That is what we want to see.

(Mr. Schachner hands copies of papers to counsel.)

122 Mr. Fielding: Your Honor, perhaps if we could take a short recess now—

Mr. Schachner: May I suggest that your Honor does not take a short recess at this time. There are three more transcripts to come. May we go through the process of formal proof at once and then have all the objections together and that will shorten the matter?

The Court: Very well.

Q. Mr. Bodinger, were you also present in the same room on April 14, 1937? A. I was.

Q. And did you also listen to the conversations taking 1123
place, that is in the next room 1509, over a listening device attached to the wall? A. I did.

Q. And did you make any stenographic or stenotype notes of what you heard? A. That is so.

Q. Could you among these three exhibits identify your notes? A. Yes, sir, those are the ones (indicating).

Mr. Schachner: Let the record show that the witness identifies Exhibit 20 marked for identification, as his original notes made on April 14, 1937.

(Government's Exhibit 20 for identification received in evidence.) 1124

(Marked Government's Exhibit 20-A for identification.)

Q. Mr. Bodinger, I show you Government's Exhibit 20-A marked for identification and ask you whether that is a correct transcript prepared by you of original notes which you took on April 14, 1937, and which you just identified? A. It is.

Mr. Schachner: I offer them in evidence.

The Court: Show them to counsel.

(Mr. Schachner shows papers to counsel.) 1125

(Government's Exhibit 20-A for identification received in evidence.)

Mr. Walsh: They have copies, your Honor.

The Court: Very well.

Mr. Mintzer: I reserve the right to object to all of these exhibits on the ground that the defendant Kandell was not present at any of these meetings.

The Court: Very well. You may reserve your right.

1126 Q. Were you also present at a conversation on April 21st in the same room? A. I was.

Q. That is Room 1508, and you listened in on a conversation that took place in Room 1509? A. I did.

Q. And you again made stenotype notes, did you not? A. Yes, sir.

Q. Which are the stenotype notes? A. Exhibit 19 for identification.

Mr. Schachner: Let the record show that the witness identified his notes as Government's Exhibit 19 for identification, as his original notes of that

1127 occasion.

(Government's Exhibit 19 for identification received in evidence.)

(Marked Government's Exhibit 19-A for identification.)

Q. I show you Government's Exhibit 19-A for identification and ask you whether that is a correct transcript, prepared by you of the notes which you took on April 21, 1937? A. It is.

Mr. Schachner: I offer it in evidence.

1128

(Government's Exhibit 19-A for identification received in evidence.)

Q. You were again present in Room 1508 and listened over this device to conversations which took place in Room 1509 on April 26, 1937? A. I was.

Q. You again made stenotype notes, did you not? A. That is right.

Q. Government's Exhibit 18 marked for identification, are these your stenotype notes? A. They are.

(Government's Exhibit 18 for identification received in evidence.) 1129

(Marked Government's Exhibit 18-A for identification.)

Q. I show you Government's Exhibit 18-A marked for identification, and ask you whether that is a correct transcript of the notes which you took on April 26, 1937, in Room 1508? A. It is.

Mr. Schachner: I offer these in evidence.

(Government's Exhibit 21-A for identification received in evidence.) 1130

The Court: Marked in evidence subject to your objection. I am going to hear you on all of them later.

Mr. Fielding: That is what I understood, your Honor.

Mr. Schachner: Does your Honor desire to inspect these exhibits now?

The Court: Do you have any other formal questions at this time?

Mr. Schachner: No.

The Court: We will take a few minutes' recess while you read these. 1131

(Short recess.)

Mr. Corbin: Preliminary to an objection, may I examine the witness?

The Court: Yes.

Preliminary Cross by Mr. Corbin:

Q. Mr. Bodinger, you sat in 1508 that afternoon of April 7 with earphones and took down on this machine of yours what you heard as best you could? A. Yes.

1132 Q. There were a number of occasions, were there not, when you couldn't get what was said, so you did not take it down? A. No, not that I couldn't get it, but that I couldn't hear it. That is, there were noises, interruptions; voices were too low.

Q. Well, when I say you couldn't get it, you couldn't get it adequately to record it? A. Yes.

Q. And that occurred also, that is, your inability to get it occurred also when two or three of them were talking at the same time or trying to? A. That's right.

Q. And that occurred on several occasions? A. Yes.

1133 Q. Do you remember when this new voice came in on that day, which you think was Mr. Goldman, there was some pretty heated talk at the early part of the time after he entered; do you recall that? A. That's right.

Q. And there was some swearing between him and Hoffman, wasn't there? A. There probably was.

Q. Some of that you got and some you did not; right? A. Whatever I got is in there.

Q. Yes. But there was some you didn't get? A. I have indicated that they all spoke at one time and that I couldn't get.

1134 Q. Now let me ask you this: With regard to all of the testimony that you transcribed, there is no mention in this transcription of Mr. Goldman being present at any occasion except April 7th. Do you recall that? A. Yes.

Q. And that he was only there during a part of the time on that day? A. Yes.

Q. I show you 21-A for identification—

The Court: 21-A is April 7th.

Mr. Schachner: Yes.

Q. I show you this copy of Government's Exhibit 21-A for identification. Will you follow through from the first page and tell us on what page your notes indicate that Mr.

Goldman first appeared at that conference? A. Page 5. 1135

Q. About in the middle of the page? A. That's right.

Q. Where his name is listed in the list of names in the lefthand margin? A. That's right.

Q. And then will you continue to run through there and tell us if he apparently was present until a point on page 16, where he apparently left the conference? A. That's right.

Q. And was not there after that? A. Yes.

Q. And did not thereafter return? A. That is right.

Q. It is a pretty difficult job recording talk of that kind, isn't it? A. More or less.

1136

Mr. Walsh: If your Honor please, this is improper on a preliminary hearing. I think the purpose of these questions is a proper subject for cross examination. Rather, I thought he was going into some other subject for the preliminary hearing.

The Court: Well, I can see that it might have some relevancy on a preliminary hearing. I will overrule the objection.

Q. This represents your best effort in that regard? A. It does.

Mr. Corbin: That is all. 1137

Now, Judge, so far as the defendant Morton Goldman is concerned, he has no objection to the portion of Exhibit 21-A comprising the presence or apparent presence of Mr. Morton Goldman in that room, namely, from page 5 to page 16. As to the balance of it, what comes before and after his departure, he objects to it as hearsay and incompetent. So far as the defendant Theodore Goldman, whom I also represent, is concerned, he objects to the entire offer as hearsay and incompetent as to him.

The Court: On those grounds, simply as to hear-

1138. say and incompetency—are those the only grounds upon which you object, Mr. Corbin?

Mr. Corbin: Well, I am not going to question, with the possibility of some human error, frailty, I am not going to question the transcript, at least at this time. I don't question it so far as Morton Goldman is concerned at the time he was there. As to the balance, I do not feel that it is competent at all as against him.

The Court: I am going to overrule your objection upon the ground that it is hearsay. There are parts of it that probably might be considered as irrelevant,
1139 not throwing light one way or the other, and if specific objection is made to any part of that, specifically pointing it out, I might probably sustain an objection to parts of the conversation. Of course ordinarily when a conversation is offered in evidence the entire conversation should go in, and will go in, in this instance, unless the defendants object specifically to some part of it. There is part of the transcript that is certainly competent. Any statement against interest is always competent and I think sufficient showing has been made here as to the gist of the crime at this time, and statements so far as interest is con-
1140 cerned would be competent against all defendant except as to Kandell. And if an objection is made by Kandell's attorney, I would reserve ruling upon an objection at this time as to him.

So upon the ground that you specifically made of hearsay, I will overrule the objection, and with the remarks I have made with reference to certain parts of the conversation there, that they seem to throw no light one way or the other, I do not see where it is harmful or where it is beneficial, and unless it is specifically requested that that part of the transcript

which is really immaterial and irrelevant as throwing no light one way or the other be not considered, why, then I will overrule the objection as a whole. 1141

Mr. Corbin: Then when the time comes that any part of the balance is attempted to be read I may then raise it?

The Court: Very well. I will rule upon it at that time.

Mr. Corbin: Specifically at that time. I agree with your Honor that there is a great deal of it that does not help or hurt either side. It doesn't matter at all, but so far as the part where Morton Goldman was there, I haven't any objection to that at all. 1142

Mr Mintzer: So far as the defendant Kandell is concerned, if your Honor please, I reserved the right heretofore to object. I make my objection. Your Honor has indicated that you are going to reserve ruling.

The Court: Yes, I will reserve ruling upon it as to the defendant Kandell and cover it by proper instruction at the conclusion of the testimony or prior thereto, if it becomes necessary.

Mr. Fielding: And for the defendant Schulman, it having been testified that these transcripts prepared by a method of putting a detectophone on the wall, the outside wall of Schulman's room without his knowledge, I object to the testimony on the ground that it is incompetent under the decisions of the Supreme Court of the United States. 1143

The Court: I will overrule the objection upon that ground.

Mr. Fielding: Exception; and I reserve my rights to object as the opportunity presents itself as to specific parts of the transcript which will be offered in evidence.

1144 The Court: Yes. Very well, you may do that, and what I said with reference to my ruling upon the objection by Mr. Corbin will apply with reference to Mr. Schulman also.

Mr. Corbin: And may it be the other way too, Judge? I should, in the interests of my clients, preserve my position with regard to the illegal search and seizure feature of the matter that has had your attention before. I want to preserve it as I did before for my clients.

The Court: Very well. You may make your objection upon that ground and I will overrule the ob-
1145 jection made upon that ground.

Mr. Corbin: Thank you, your Honor.

Mr. Mintzer: That applies to all defendants?

The Court: Yes.

Mr. Walsh: If your Honor please, we all admit that there are many parts in the transcript that are irrelevant. That is the reason we furnished all defense counsel with copies of it so we could save time and as we go along, if they will indicate what they consider irrelevant, we will be glad to dispense with the testimony so far as that is concerned.

The Court: Yes, very well.

1146 Mr. Walsh: Judge, if you would like to follow it for your own convenience—

The Court: I think I would rather listen.

Direct examination continued by Mr. Schachner:

Q. Mr. Bodinger, do you have any independent recollection except what you put down in these notes of what was said? A. No, I don't.

Q. I ask you to read those notes to the jury.

Mr. Schachner: That is, the witness is now reading Government's Exhibit 21-A. 1147

Q. Before you start reading that, I would like to ask you a few more questions, just to clarify what you are reading. Now on that exhibit there are certain names mentioned. Whenever somebody seems to say something, there is a name as to who said that, isn't there? A. That is right.

Q. Now can you tell the Court and the jury whether you are sure that the person specified by you as having said something was actually the person that said it? A. I can't be positive in every instance. In most instances I can. I can be positive that what I have here was said. 1148

Q. Tell me, can you be more sure of what was said in the beginning or at the end? A. Well, I can be more sure at the end.

Q. And why is that? A. Well, having heard them repeatedly more or less, I would begin to distinguish more clearly.

Q. You may proceed with the reading. A. (Reading):

"The proceeds of that sale now goes to me * * * Economy Sales Co., Fifth Avenue, New York. One of their traveling men. So that's * * * Endicott-Johnson went over to the place and there was six or seven other people that Cohen sent down. Then I thought this. I mean it, serious. I 1149
thought it was a question of looking over the estate to see that everything was all right for the assignee. Then let the thing go through in a normal way and yet looking after the interest of the creditors."

Mr. Fielding: I don't like to interrupt, but would you note that you don't know who is talking?

The Witness: In that instance that was the opening of what I started hearing, so I couldn't tell who it was.

1150 A. (Continued) Hoffman: 'In spite of the fact * * * right off the bat it was a question of trying to give the creditors every goddam cent * * * comes along with 40 per cent to creditors. Let me take another thing looking * * * .

"Schulman: All your conscienciousness won't help you anything. I'll tell you why * * * an amount equal to what the federal court would allow. That's all he could charge us. What the bankruptcy court would show.

"Hoffman: The auctioneer charges ten per cent but the other five didn't go to you personally. Will
1151 Endicott-Johnson give you any * * * The family of this Bill said that they wanted the creditors satisfied: that they are doing business there about twenty years. Maybe after Hymowitz gets out of jail he may want to go out of the business. Maybe he's looking for parole. After all, there is nothing he did, and he wants to go into business, and the creditors get 78 per cent or close to the full amount, won't they look with a better spirit on an amount like that? * * * it's a practical proposition. You're a crook so long as you don't give money, whether it's 90 per cent or 20 per cent. This is the psychology of it.
1152 As far as you are concerned, your man will be better off by getting a release, having it black on white from all creditors. But don't you see how the difference in the amount between the liability and the amount that the creditors would get under the assignment would be so small that it wouldn't make a hell of a lot of difference. Eventually he'd make up the difference * * * It would be about five or six hundred.

"Schulman: I want to tell you something. Maybe to you five or six hundred dollars don't make any difference, but to this guy over here, when he comes out broke * * *

"Hoffman: But you always know that if the creditors got 70 or 80 per cent, the majority of the reputable ones wouldn't press him for the balance. 1153

"Schulman: Not a goddam chance. They'd let him ride for that, and I've seen it in many other cases. He'll pay everything that he has. These creditors saw fit not to go after him. I know several * * *

"Hoffman: They will give it to him if he gets proper endorsement.

"Schulman: Not only that, the man still has debts of five hundred or one thousand against him. He will never get a loan * * * I know my end of it. I'll tell you why I know a little bit better than you. 1154

"Hoffman: Did you see Goldman the other day, did you speak with him?

"Schulman: For an hour and twenty minutes.

"Hoffman: You didn't speak to him at all about it?"

Schulman said something which wasn't to be heard.

"Hoffman: What does he figure to go through?

"Schulman: As far as I'm concerned * * *

"Hoffman: We can tell creditors that after the order was sent out, we are disposing of the stock in the most expeditious manner rather than incur all the * * * we feel that we might expedite it * * * and saves your bank and Goldman cannot do that himself * * * still, I filed, not he. 1155

"Schulman: Will you call Mr. Goldman?"

That was probably addressed to his secretary.

"Hoffman: I want to get back to the office. Is Kandell going to be here too?

"Schulman: Yes. * * * they will be here any minute * * *."

Mr. Walsh: Just a second. Will you indicate at any point where you are reading, certain words that

156 you couldn't hear—the dots I presume you didn't hear?

The Witness: That is correct.

Mr Walsh: Will you specify that so the jury will follow the continuity of your thought?

The Witness: All right.

A. (Continued) Hoffman started out saying something which wasn't audible—"all the creditors are going to be there, and the result was your three creditors showed up and nobody else, and those three and Kandell became the Creditors' Committee. Isn't it a goddam shame?" —some-
157 thing missed—"why with your help"—something missed—

"Schulman: I didn't know that you were the guy. They tell me that.

"Hoffman: But Levis told me that Goldman and Kandell"—something missed—

"Schulman: If you hadn't come up"—something missed—"you know, this Marty Goldman is smarter than his brother Teddy Goldman.

"(Someone said; Would you mind holding the wire, he's busy on another phone? Who is this, please?)

158 "Hoffman: You know this fellow Teddy Goldman was up to my office twice. This Martin Goldman looks to be a sharp guy.

"Schulman: They see a damn case and they won't let go no matter how the creditors will benefit by it.

Some improper language here.

Mr. Walsh: I think we can skip that, if your Honor please.

The Court: Yes.

Mr. Walsh: I will make objection that that is irrelevant.

A. (Continued) "Hoffman: I first heard before I met him. Now I'm convinced that you yourself feel in your blood that they should get 80 per cent and they wouldn't"—something missed—"don't worry this masterpiece. I had Kolman, who is an attorney, appointed the assignee and so that he could see and watch every goddam thing that was going on, and I was going to be down at the sale and keep my eyes peeled, and if there was anything wrong, I was going to call the sale off. I'm not kidding you." —something missed— "He's not Schulman. Did you ever see the guys the way they shortchange you." 1159

"Schulman: It's the same way this guy this way"— 1160

At this point there was the noise of a fog horn which interrupted the hearing.

Mr. Corbin: Who made the fog horn?

The Witness: No. Apparently this was some outside noise which was picked up.

Mr. Walsh: It sounded like a fog horn to you?

The Witness: Well, I mean Chambers Street, near the river, from the shipping. That is what it was.

A. (Continued) "Hoffman: You know the inspection of these buyers, I told Feldman not to leave more than one or two at a time into the store. 1161

"Schulman: I'm telling you now, would you know how to check whether they got a few?

"Hoffman: I could check and make sure, darn sure, that they wouldn't do any guzzling. How do you fellows know how?

"Schulman: After you know the tricks you know how it works. They can't pull any tricks on me.

"Hoffman: I know better. In this case there was 360 lots and it has to be a bid on each lot, and down

162 at the sale I keep checking all the bids for each lot" —something missed—"suppose they tell you here?

"Schulman: How do you know?

"Hoffman: I'm keeping track of the count.

"(Several additional persons seemed to engage in conversation at this point which could not be distinguished.)

"Hoffman: Who spoiled it?" —he said something which wasn't gotten—"some got time, another got time, so till today, 90 per cent or more prisoners" —something missed.

"Schulman: Even the big guys, even the bigger guys. As I told you before, the Association is a misnomer. They have no responsibility. They can tell you to go to hell. Even so you can take my diploma away. And that Association is a racket for themselves. If you ask me, don't the creditors know this"—something missed— "It looks like with the five hundred they are getting from the city, we are expecting to get from the city, and there were only about $2500 liabilities. How the hell is it close to 80 per cent?

"Hoffman: It might have bought more. That stuff looked good"—something missed—"said that the stuff was real good.

"Schulman: Said that the stuff looked very good to him.

"Hoffman: You mean he doesn't know what the hell it's all about"—

At this point someone apparently was speaking on the phone. Shall I skip that?

Mr. Walsh: That is irrelevant.

Mr Corbin: There is no relevancy there.

The Court: Yes, just eliminate it then.

A. (Continued) The next thing Hoffman said: "He may 1165
have come so late that the other attorney had to default already, so you guys finally got to work.

"Schulman: As I told you before, the only thing I'll tell you. They are making money quicker. Ordinarily, the money he was getting, only ultimately this guy"—something missed—"I'm convinced that the guy honestly means that the brothers were going to get, as he told me last time he had some kind"—something missed—"he told me not to be such a"—something missed—"I told him over here, whether you like the setup or you don't like the setup, he shouldn't 1166
hog the whole picture himself.

"Hoffman: Last week his wife and my wife"—something missed—"that the judge will give me an allowance as the attorney for the assignee six months later or a year later"—something missed—"so that's the situation I'm telling you myself"—something missed—"There's room for others"—something missed—"you got the damn thing so sewed up. I'll tell you I tried everything to dissuade everybody from allowing the petition. I'll tell you something, I'm in this business"—something missed—"will you stop making speeches and get down to business. 1167

"Schulman: Then you should have stopped talking so much. I'm in this business, you think I'm going to write"—something missed—"I'm telling you he's sincere about it.

"(Third party seemed to be speaking, but could not be distinguished.)

"Hoffman: Let's get down to business. He wants to waive, and he wants even including the proceeds"—something missed—"whatever the records indicate. I'll tell you what Goldman, I'll be satisfied if you"—something missed—"called thirty for the assignee,

1168 and in order to show"—something missed— "Well now, listen, Goldman, let's get this straight.

"Goldman:"—something missed—"never made a deal with him in my life and"—something missed.

"(At this point all the parties started arguing and speaking at once.)

"Hoffman: You know goddam well whatever I told the judge was true.

"Goldman: I know damn well it wasn't the truth, otherwise you'd sell that stock and pro-rate the balance for the creditors.

"(Telephone call: Well, I'll tell him later. What's
1169 the number? Tell Sam to call him and find out later on. I can't call him. I'll be back shortly anyway. I can't tell you.)

"Hoffman: You were there. You heard me tell Coxe for 45 minutes"—something missed.

"Goldman: Listen, I don't handle this bankruptcy business. I ain't going to be besmirched by anybody at all.

"Schulman: Wait a second.

"Goldman: You know me for thirteen years. It didn't make any difference to you fellows to come in on a clean assignment and try to dirty the damn
1170 thing. We give creditors a quick sellout. You wanted to give them 40 per cent.

"Hoffman: Yes. I figured to give them 80 per cent. You get enough money and"—something missed—"I offered to Schulman to see that everything was right.

"Schulman: I wouldn't let him act. I wouldn't let anybody act.

"Hoffman: I represent 70 creditors and you know it, and you know that I sent letters out to everybody, every one of the creditors, telling them what the assets were and the liabilities were.

"Goldman: How did you know it was true? 1171

"Hoffman: In the first place, you asked me to come down and speak to you. Now you have brought Mr. Goldman over here, and now he starts something.

"Goldman: You started.

"Hoffman: I didn't start it. You're getting to be as bad as Schulman. I'm going to tell Bob Levis everything that took place up to that point.

"Goldman: But tell him the truth.

"Hoffman: You bet I'll tell him the truth.

"(For some time the conversation went on in very low tones which could not be overheard.)

"Hoffman: I said I'd consider the God damn 1172 thing, and that's the reason I didn't give Kandell the list of creditors"—something missed—"I did not. I said I'd think that over, and I said that you people could send your buyers down there, and then you come back and say I offered a settlement or somebody said that"—something missed.

"Goldman: But the assignment would be put out on commission, and Kandell would get paid and the auctioneer would get paid.

"Schulman: Kandell will get it and Kolman will get it.

"Hoffman: Bristleman would get it and Rebek 1173 and Brandes would get it and Schwartz and Zuckerman would get it, and all the creditors would get it"—something missed—"yes, getting what they are entitled to. What are those three fellows entitled to more for?" —something missed—"wait a second, here's what you said. You told me that you could get a certain amount of money for that particular stock.

"Schulman: I did not.

"Hoffman: You don't know how much you could

1174 get? You told me you could force a settlement of 40 per cent through Kandell's help with the Association, and that that 40 per cent would represent around $1000 because there is about $2500 liabilities, and that the balance would be divided up. Kandell would have to be considered; you'd have to be considered; the auctioneer would have to be considered. The assignee, myself, and some of the other creditors, such as the three creditors. God damn right I was steamed and steamed plenty. Do you consider it fair? Wait a second. I didn't speak to you since the time I left that meeting. Is that
1175 right? I didn't speak to Cohen since I left that meeting until the following Friday when I asked him for an offer.

"Goldman: Offer"—something missed.

"Hoffman: Wait a second. I asked him if he had an offer, and he tells me go for fifteen hundred when I knew damn well that stock was worth close to two thousand dollars. I had advised Niehouse that the second inventory taken by the auctioneer indicated that that stock should bring around $2000 at the sale. What does Cohen do? Cohen begins
1176 to tell everybody that I said it was $15,000. He knows damn well he's lying"—something missed—"wait a second. What does two thousand mean.

"Goldman: You'd get back the other statements to clarify the record. You know I have a pretty good figure.

"Hoffman: Didn't you say you were going to get somebody by the name of Goldmany, Goldman or some auctioneer or buyer?

"Goldman: I said I don't know.

"Hoffman: You said it was a cinch to get it through for 40 per cent.

"Goldman: I didn't guarantee any amount. 1177

"Hoffman: No, but you mentioned 40 per cent was easy.

"Goldman: I said 40 per cent would be a good sum.

"Hoffman: And I asked you.

"Goldman: I said you could get paid and your assignee could get paid and your auctioneer could be paid.

"Hoffman: And you also said you could get paid and Kandell could get paid.

"Goldman: Supposing I said that?

"Hoffman: That in itself isn't the whole thing" 1178
—something missed—"wait a second. I'll tell you what harm you did. When I showed you fellows that I didn't want to have any part of it by refusing to call back Kandell or Cohen and yourself, and instead had the assignee, Kolman, call and arrange for an appointment to have buyers or people or creditors look at that stock, that should have been sufficient indication to you fellows to keep the hell away from me, but instead what did you do?

"Goldman: Your 100 per cent wrong.

"Hoffman: You see?

"Goldman: Because I figured that you were 1179
sincere. Then you're 100 per cent wrong. I'll tell you why. You're doing creditors a favor by allowing me and X and Y and Z to go up and look at the stock on Monday or Thursday and any other day in anticipation of the assignee's sale, showing us" —something missed—"sure, but you fellows Goldman, can go fly a kite. Sammy Kandell can go fly a kite.

"Hoffman: Isn't Sammy Kandell interested in creditors for the association?

"Goldman: Wait a minute; if I was there representing creditors, you would tell me also to glorify myself by flying a kite, and if you want it in plain English, from our point of view"—something missed.

"Hoffman: Wait a second. What can I harm there"—something missed—"all I can be even at this time"—something missed—to satisfy fee for representing the assignee.

"Goldman: Don't the creditors get dividends? Don't they pay a fee for representing them? You're all wrong. You're all bad blood and ill feeling and everything else. Here's the point, Mr. Schulman. I indicated to these fellows that I didn't want to have any part of that.

"Hoffman: Wait a second. I also told them that they were welcome to send down any creditors that they wanted, any buyers that they wanted, even at the time of the sale; to see how that sale was conducted, and the sale was to be properly conducted.

"Goldman: You're doing them no favors.

"Hoffman: Aren't they interested?

"Goldman: No. I'll tell you why. In the first place, one is a real personal reason and one is"—something missed—"I want to at least straighten out the fundamental issue here. In the first place, let us say from a strictly legal basis or strictly business basis, I represent, let us say, forget Goldman is going to take"—something missed—"and I do a substantial part for the creditors. I say to myself, and I say to you very openly, I don't want you, Mr. Hoffman to run my part."

Mr. Corbin: He did not want Hoffman "to run his party"?

The Witness: That's what I have.

Mr. Corbin: Party? 1183

The Witness: No. I have "part." That is what I said.

Mr. Corbin: I thought you said "party."

The Witness: No.

"I say to myself, and I say to you very openly, I don't want you, Mr. Hoffman, to run my part."

A. (Continued) "Hoffman: Right. Let me ask you something to this point. Let's be frank. Who in the hell did he represent in that creditors' bunch? Who did Goldman represent? He tells me he represented Rockefeller. He did like hell. He never authorized Kandell or the Association to be repaid, and Goldman comes in and said he represents Butler Bros. What do you call that? 1184

"Schulman: The hearing was"—something missed—"Goldman didn't represent Butler Bros.

"Hoffman: I found out"—something missed.

"Schulman: Goldman represents other creditors and also could come there at anybody's instigation.

"Hoffman: Wait a minute, Jake. We learn as we grow older"—something missed—"represented by associations that make statements and so on to undermine fellows. Did you represent Butler Bros.? They had the claim of Butler Bros. I'll tell you the reason I called Butler Bros. and I explained it to Cohen. The reason I called Butler Bros. to apologize for the fact that I didn't keep an appointment which I had with him the day that your brother came to my office. Now the reason I didn't go over to see Niehouse, I had an appointment with him that day, and that is the reason I didn't go over to see him because your brother came to the office and when I called him subsequently, I apologized for not keeping the appointment, and explained to him 1185

186 the fact that Mr. Goldman came up to my office and he represented Butler Bros., and under those circumstances, I didn't want to come over to speak to him because it would be sufficient if I spoke to his attorney, and at the same time I told him that the inventory showed an increase of close to $500 in the estimation of an appraiser. I didn't go and call any client and tell them that their attorney's did anything else.

"Goldman: For what purpose"—something missed—"to let you go ahead with the assignment and we were doing a lot of wrong things.

187 "Hoffman: Didn't I send him the letter before I even spoke to you fellows? Didn't I explain in the letter what he expected to get?

"Goldman: Intentionally or otherwise, you should take that opportunity. Let us say somebody"—something missed—"advising somebody else's client"—and the end of that was missed.

"Hoffman: I had an appointment with Niehouse.

"Goldman: Let me tell you something. For instance, I represent the three people or four people, let's say. I don't want X or Y or Z, whoever they may be, and as long as they are designated by

188 letters"—something missed—"to come to the sale. It so happens that you were up today"—something missed—"or even the attorney for the assignee, I'm sure that said to the creditors where the assignee represents loan creditors"—something missed.

"Hoffman: Where the records indicate"—something missed.

"Goldman: I'll tell you why. They are real legitimate first class creditors.

"Hoffman: They got the bank account and withdrew certain money, and on the same date"—the

end of that was missed. Then there was an argument, all of them speaking at one time and there was also some noise in the earphones. 118

(Reading):

"Goldman: If I represent a sufficient number of creditors, let us say"—the end of that was missed. The voices became too low to be heard. Goldman said something,—"dismissed the involuntary petition.

"Hoffman: You also make a motion to dismiss the assignment proceedings. The real method he wanted me to say first, we will sell it wholesale. When I say we, I mean all of us, so you shouldn't say I accuse"—something missed—"and also tell creditors that"—something missed. 119

"(Howling in the earphones.)

"Schulman: I'll say this much. We'll sit down together if we can't work out our own fees, then we'll get the representatives of the creditors, if we can't do that.

"Hoffman: Where does the assignee come in?

"Goldman: The assignee, attorney for the assignee, the auctioneer that he engaged, is entitled to a fee"—something missed—"whether called in the association or whether we called in Goldman. Here is the point. What are you doing here? 119

"Hoffman: If there is going to be any kidding around"—something missed—"whom do you represent there?

"Goldman: I represent more creditors. Assume that I'm wrong, whether he represents a Chinaman or whether he represents six creditors, as far as this is concerned, the association includes, comprises, for purposes of your discussion.

"Hoffman: Oh, don't get so loquacious and get down to business.

192 "Schulman: You did a lot of talking.

"Goldman: I think I'm plain enough.

"Hoffman: You mean the association gets"— something missed.

"Goldman: Oh, no. The Creditors' Committee.

"Hoffman: The full amount of the purchase goes to the Creditors' Committee, is that right, together with the proceeds from the city?"—something missed —"do you want to have me change that a little bit? I want to be impartial. Mr. Goldman after all does have some little experience in this line, and as I think I indicated before, I even came here, as for
193 the real mechanics of this thing, of the workings of it, I think we all agree, that is, in writing the letters we all left to him for this particular reason. He is in a better position than you or I because I'm supposed to be the"—something missed—"You're supposed to be the attorney for the assignee. Now we are proposing a method of distribution to creditors which will take a form other than the assignment proceeding or the bankruptcy proceeding. So I think this method of procedure should be so as we in our representative position, that in view of the
194 bankruptcy proceedings which may entail additional expense. We will tell the creditors that.

"Goldman: You mean we'll get the creditors' consent?

"Hoffman: Yes.

"Goldman: Outside of relatives, let him get the consents.

"Schulman: How was this going to be sold?

"Hoffman: By your man signing a bill of sale to X. For what price.

"Goldman: For the highest price that we get.

"Hoffman: What is the highest price?

"Schulman: Leave it open. 1195

"Goldman: The Creditors' Committee including yourself can come here.

"Hoffman: Let's not kid ourselves. Wait a second. Let's not kid ourselves. Let's not give it a price close to $2,000. It should bring around that amount.

"Goldman: You're crazy. You mean an auction sale?

"Hoffman: You have got about close $100 for expenses already"—something missed—"and taking inventory and advertising. Wait a second, you got close to $100 expenses that you know you got to pay anyway. Isn't that right? 1196

"Schulman: Who has got the expenses?

"Hoffman: Yes, that's right, but say, assume for the moment that it's $100, maybe more or less.

"Goldman: Well, supposing it was two thousand.

"Hoffman: The auctioneer gets five percent.

"Schulman: Ten percent.

"Hoffman: He's going to get five percent, not ten percent. That's all you're going to get, that is, about $100 from $2,000. That means there's $1,800.

"Schulman: You got advertising.

"Hoffman: That's already with the catalog and everything he has. That's what I'm talking about. 1197
That includes the cataloging, advertising. Wait a minute, there is four men at least.

"Schulman: There is two men.

"Hoffman: At the sale.

"Goldman: All right. You think it will bring two thousand. The most you'd get would be seventeen hundred or eighteen hundred. That's assuming it brings two. But supposing they fool you and it only brings fifteen hundred.

"Hoffman: Who appraised it?

198 "Schulman: We can't control the sale.

"Hoffman: Neither can you.

"Schulman: Can't control it either. Well, how do you control it when you have bidders from the outside? By the bidding on the"—something missed.

"Goldman: Oh well"—something missed.

"Schulman: Who is going to be the one to appraise the merchandise.

"Goldman: We have private stock bidding against each other, and it isn't a private auction sale for the reason a man may take that and buy it privately. Once a sale has taken place there. Well, a sale will
199 bring, for example, you believe, $2,000, and it should bring privately more. And yet I asked Cohen and he says twelve to fifteen hundred.

"Hoffman: Twelve to sixteen hundred dollars.

"Goldman: You get as low as twelve hundred or as high as sixteen hundred. That meant to say he got a group of people in"—something missed.

"Hoffman: Supposing you get eighteen hundred. You at least know that when we get sixteen hundred you can't get any less. We got the sixteen hundred tied up.

200 "Goldman: At a public auction sale he can't tell.

"Hoffman: How many auction sales did you conduct? Didn't you conduct plenty of auction sales? For the assignee or trustee or for the receiver? How many auction sales did you conduct?

"Goldman: Plenty of them.

"Hoffman: Well, why weren't those conducted by private sales?

"Goldman: I'll tell you why. Very good answer. A very good question and deserves an answer. Ordinarily I disapprove of assignment. Sometimes" something missed—"the only way you could prevent

him from going"—something missed—"is to have an assignment. Other times you have a wide disparity between assets"—something missed—"a two thousand dollar stock when they owe ten thousand dollars. It don't bring a God damn thing. 1201

"Schulman: Personally, we don't care about the stock.

"Hoffman: Let me ask you something here. You have got a situation where you got about twenty-five hundred in liabilities and approximately twenty-five hundred in assets.

"Schulman: You were designated as the boss and we want to be the boss. 1202

"Goldman: I wouldn't say"—something missed.

"Schulman: I wouldn't say we want to be the boss.

"Goldman: I'd say that just because the liabilities and the assets are such that the creditors can really do something"—something missed.

"Hoffman: I'd say this: that if creditors even got 60 percent, if creditors got 60 percent, the reputable creditors wouldn't ask for any difference or balance.

"Schulman: Who is reputable ones? 1203

"Hoffman: They I think are in the minority and have small claims.

"Goldman: The fact you call a creditor reputable" something missed—"doesn't go after his balance.

"Hoffman: Not to that extent where they see that a man has made an effort. Where they see that a gentleman has made an effort.

"Schulman: I gave you a plan where your man specifically got the release. You talked about.

"Hoffman: You get"—something missed.

"Goldman: You get the releases from all these

1204 unknown creditors. Yet give the proposition for all creditors to sign a release, and you run out.

"Schulman: The mere fact"—something missed.

"Goldman: When creditors are told that they get close to one hundred cents on the dollar by letters and they get a full lengthy letter explaining the condition of the estate, and then subsequently somebody makes a proposition of forty cents on the dollar"—something missed—the proving is going to be"—and the end of that was missed.

"Hoffman: That the letter was a little bit dishonest.

1205 "Goldman: They'll depend on it"—something missed—"are you afraid that there was going to be a reflection against you? All you have to do is to call in the creditors you are concerned about and let them"—something missed—"upon the situation"—something missed—"we all told you that when the thing wouldn't be settled by creditors, we felt confident that every creditor would consent because we felt it would be done in such a way that we'd satisfy the creditors"—something missed—"or on the day of that sale there are two or three other sales of items in the same line."

1206 At this point someone seemed to be making a phone call, and Goldman said:

"In this particular case there are buyers for ten thousand and five."

Mr. Corbin: It is obvious that he was talking about some other case there.

Mr. Walsh: I would assume so.

Mr. Schachner: You suggested that we do not read it.

Mr. Corbin: No, it is all right.

The Court: You can eliminate that if you wish.

gentlemen, that part of it. If not, let it be read. 1207

Mr. Corbin: I wouldn't eliminate it. I just made that observation because I do not want anybody to think that those figures applied to this case.

The Court: Well, I think your observation is correct.

Mr. Corbin: Yes.

The Court: You go on and read it, then.

A. (continuing) "Hoffman: You have got something that's worth twenty thousand dollars. Is there any sense in getting a ten thousand minimum bid? 1208

"Goldman: In this particular case in which we got ten thousand, the most we could have gotten for the stock was ten thousand.

"Hoffman: Why was it appraised then?

"Goldman: It showed that it could bring anywheres from twelve to fifteen thousand, and we said we could never rely upon an auction sale, so we don't want to take the twelve or thirteen thousand" —something missed—"is the fellow that made your appraisal"—something missed.

"Hoffman: Holding the sale down to ten five or they are making two or three thousand dollars 1209 on it.

"Goldman: I'll see the rest of the buyers.

"Hoffman: Again it comes down to the question of others watching. That's what I said. To have the creditors down or have the representatives down at the sale to see the sale.

"Goldman: If you're going to have an appraisal by Reach Bros. that's one thing. If you're going to have an appraisal by the association that's another thing"—something missed—"send the Underwriter's Salvage over there and find out what it's worth."

210 Telephone call here which does not obtain to the—

Mr. Corbin: May we agree that in that connection that where Mr. Goldman suggested sending the Underwriter's Salvage over there to find out what it was worth, that that Underwriter's Salvage is the official designee of the Federal courts and has been since 1927.

Mr. Walsh: If Mr. Corbin says that is the fact, that is the fact.

Mr. Corbin: That is what I understand. I mean the Federal courts in this district.

The Court: Very well. Is that stipulated?

211 Mr. Walsh: If Mr. Corbin says that is the fact, that we had agreed that this whole page was irrelevant so it doesn't make any difference anyway. It would appear that they are talking about something else.

Mr. Corbin: I did not say that wasn't relevant. Where my client made that suggestion, I think it is quite relevant.

The Court: Very well. Let it all go in.

Mr. Corbin: I just wanted to identify the name, who they were.

212 A. (continuing) "(The parties apparently then left the room, and returned a short time later.)

"Schulman: Are you satisfied? Then why do you hesitate?

"Hoffman: I don't know who is to be in charge.

"Schulman: Niehouse, Donaldson, anybody else you want. Here you are, put the names down of all the creditors and you can have your choice.

"Goldman: I say"—something missed.

"Hoffman: We three are going to agree. Who the hell is Niehouse? I went over to Jersey City to

talk to him, and one of my clients called him up and my client called him up while I was over to Jersey City." 1213

Mr. Walsh: I think "an individual" should be inserted here.

Mr. Corbin: A what?

Mr. Walsh: Just say "an individual" should be inserted here instead of the language in it.

Mr. Corbin: Oh, I see.

The Witness: There is some improper language which can be skipped.

Mr. Fielding: "The individual."

1214

A. (Continuing) "The individual sits there on a little elevated station, a goy, and I asked Armstrong or whoever it was, I want to talk to Niehouse. Niehouse will keep his eyes open and won't even give me a tumble. Niehouse give a good"—something missed—"about you. Because your name is Goldman, and he cares for the man in the moon. I say we three"—something missed—"go home. I will straighten it out with him. All right. Say Goldman, there are also three hundred dollars loan creditors exclusive of the relatives.

"Goldman: You want to include them? 1215

"Hoffman: Why, aren't they creditors the same as anybody else?

"Goldman: Who are they?

"Hoffman: One is connected with some synagogue. Three hundred dollars of loan creditors. Sure, I wanted to know who the hell he represents. Who was he talking for, Kandell? Who the hell does he want on the Creditors Committee? What is he going to get some phoney on the Creditors' Committee and take phoney bids and make their split on the difference between what this phoney buyer is going

1216 to offer them and what the stuff is really worth? Thats why I was holding him close to the $2,000 figure. He's not kidding me"—something missed—"Dunn and another man made an appraisal there of approximately two thousand. It ran between nineteen and twenty-one, and the figure of two thousand was struck as an average."

At this point the conversation became very low and some of it was missed.

"Schulman: Westbaum hasn't had a dry goods sales in the last three years.

"Hoffman: Let me tell you something, when the
1217 assignee was down there, he reported that one of the buyers that came down there said that the stock was worth close to eighteen to nineteen hundred dollars, and was willing to pay fifteen hundred, and kick back three or four hundred, so we can get an idea of what the stock is worth, so what's he trying to do, kid me? Whats ten thousand dollars minimum offer? What's he giving me a buggy ride?

"Schulman: They run into big cases. I told him, this is a small case, but it's a good case.

"Hoffman: You know what I'd do, my friend?

1218 "Schulman: This is a good case where the creditors would legally get their money without any trouble or waiting or bother, and this monk had to stick his face into it causing every trouble or anything. Hungry, I'm not hungry. The hell with that goddam thing. You see how many assignments I handle?"

The voices became too low again to be heard, but Schulman said something and then continued: "with all the big cases and everything else, they're working exactly for glory. If they do grab themselves five hundred or seven hundred or we grab ourselves one hundred fifty, and they wind up with all

their forty or fifty or sixty creditors in the office and 1219
a couple of stinking lawyers and everything else, they wind up less net than you and I. You understand, that's what I told this fellow, and the proof is not only that they run after those fifteen hundred dollar bills and all that, but they have time to do it.

"Schulman answered the telephone: Hello, yes, sure. Look, I'm going to call you back in five minutes. O. K.

"Hoffman: That's all it is, petty larceny business.

"The parties continued to speak in very low tones.

"Hoffman: He said what? What about the 1220
assignee?"—something missed—"said that was all right? What, $1,400?

"Schulman: Yes.

"Hoffman: Fourteen hundred dollars would be close to, I should judge, close to 60 percent"—something missed.

"deduct the auctioneer's fees and the fees remaining from the 60 percent, and the amount realized on the sale of the assets and then the balance is divided three ways.

"(It was impossible to overhear Schulman's remarks for some time at this point.)

"Hoffman: The auctioneer's expenses, I'm talking 1221
to you in round figures, whether it's 150 or 200. I'm not going to scrap with you people when there's enough to go around. I'm not interested.

"Schulman:" —something missed.

"Hoffman: So we got $600"—something missed—"sure, you're deducting as much as $200 from the assignment.

"Schulman: You got $400 in that other case that you did ten times as much work.

"Hoffman: The work didn't make any difference"

1222 —something missed—"would have gotten $500"—something missed—"I want to tell you something. Here is an open secret. I don't owe any allegiance or confidence"—something missed—"somebody and one of the sweetest, but not one of the most honorable"—something missed—"pays in bonuses alone during the year three thousand dollars because for instance, he is entitled to a $10,000 fee or $20,000 fee and everything else, and got a wife that can spend more money than he ever earns, pays to a guy I know $3,000 in bonuses in order to get money in"
—something missed—"in other words, loans it during
1223 the disallowances come in. Three thousand dollars a year at least in bonuses for lending money, for borrowing money.

"Hoffman: I don't know what your financial background is or isn't, but I say two hundred today in your pocket is worth three hundred next year—possibly three hundred next year.

"Schulman: We'll dismiss the petition. I'm going to send over a man in the morning and that man will"
—at this point the voices died down again.

"Hoffman: How about having control of the
1224 money?" Something missed. "consenting to the dismissal of the assignment and have a paper signed that his fees and expenses"—something missed—"now when do you want me at the store, nine o'clock tomorrow?

"Schulman: Tentatively now, and then if its wrong"—something missed.

"Hoffman: About 10:30 tomorrow morning.

"Schulman: And if there's anything wrong, I'll be there because the what did you call it, the jurisdiction of the bankruptcy court and all that.

"Hoffman: I don't know whether the petition in

bankruptcy, where the assignee even has a right to go near the assets. 1225

"(Someone made a telephone call: Hello, Mr. A., look, the man with the key is not available now, but tentatively we made an appointment. If I don't call you by ten o'clock tomorrow, then the appointment stands for ten o'clock at 36 the Bowery. Just the judge, I and Avery and all that stuff. Where? Who sent you? Oh yes.)"

Mr. Walsh: Whose voice is that, that telephone call that you heard, Mr. Schulman's?

Mr. Mintzer: It doesn't say.

The Witness: I haven't got it indicated here. 1226

A. (continuing) "Hoffman: Mr. Schulman, I'm going back to my office. Tentatively for 10:30 tomorrow morning.

"Schulman: O. K., yes.

"Hoffman: Good night.

"(Hoffman apparently left, and Schulman apparently continued with the phone call.)

"I'm in a position now, I control—what was the figure that you had the appraisal? He wanted to give the creditors 80 cents on the dollar—fighting to give it to them. No fooling. We had to throw it 1227
into bankruptcy and steps and so, in order that he should make a dollar? So here's what he did. Between you and me he wanted to give creditors 80 cents on the dollar, so there was no room for the boys. So we dumped it on it. Do you understand? The reason I tell you is this. He had two or three men of his own, his auctioneer, that wanted to give him eighteen hundred to two thousand, you understand? Now Goldy even said that it would bring sixteen hundred. Goldman is smart. He says he'd bring twelve hundred and sixteen hundred, under-

1228 stand? So figuring when he told me that somebody had raised it to two thousand and wanted to give it to him at the figure, I figured Goldman would get thirty-three hundred for it, but as it is now take another look and tell me. You don't have to. If we can get a few dollars for ourselves—the result is three. I'll meet you there tomorrow at 10:30, or else if you like, you can come here around ten and I'll go with you. Why, where is it near? I'll have my car here anyhow. The other deal I'll know tomorrow as I told you yesterday also. I'm in control. Yes. Did you see him there? That's why it's in
1229 bankruptcy. I know he will. Yes, yes. All right. Look, I'll tell you this much. In just about a day or so apart. I beg your pardon. I didn't ask that. No. No. I didn't ask that. O. K. big boy, I'll meet you there at 346 tomorrow unless I call you up to the contrary about 10 o'clock."

That is the end of it.

The Court: Is that all of that?

The Witness: That is all.

The Court: Gentlemen, I have made some appointments which require my leaving here Thursday morning. I am just wondering if it would inconvenience
1230 you to hold a session tomorrow morning from about ten to twelve-fifteen.

Mr. Walsh: It is all right with us.

The Court: I do not want to inconvenience you gentlemen. It looks like now that this case is going to go on for several days next week, and I would like to get at it so that I can finish it Monday, Tuesday and Wednesday, if that is at all possible.

Mr. Mintzer: Judge, I have an arrangement to deliver a talk tomorrow morning. I can cancel it, of course, but I would not like to do it.

(Discussion off the record re adjournment.) 1231

The Court: Very well. We will convene Monday morning at ten o'clock. I will see Mr. Ickes and see about cutting the morning calendar very short. We will get furt[illegible] along into this case.

Very well. Recess until ten o'clock.

(Adjourned to Monday, July 22, 1940, at 10:00 a. m.)

UNITED STATES OF AMERICA

—against—

MORTON GOLDMAN, et al. 1232

New York, July 22, 1940,
10:00 A. M.

TRIAL RESUMED.

NATHANIEL BODINGER, resumed the stand.

Direct examination continued by Mr. Schachner:

Q. Mr. Bodinger, will you please continue reading from where you stopped at the last session.

Mr. Walsh: He finished. 1233

Mr. Fielding: My recollection is that he finished the testimony of the first time that he took those notes.

The Witness: Yes, that is correct.

Mr. Fielding: If that is so I, at this time, on behalf of the defendant Schulman ask that the entire testimony be stricken out on the ground that the stenographer himself admits that he did not get the complete conversation of all parties who were at this meeting. Now it is manifestly unfair, in my opinion, to take part of a conversation which will naturally

1234 result in nothing but a meaningless garble and then as to another transcribed conversation, take down practically all of it.

The Court: I will overrule the motion. I think that goes to the weight of the testimony rather than to its competency.

Mr. Fielding: Exception.

Q. Will you start reading then the meeting of April the 14th?

Mr. Walsh: That is Government's Exhibit 20-A.

Mr. Schachner: Let the record show that the wit-
1235 ness is now reading from Government's Exhibit 20-A.

A. This is a conversation on April 14, 1937, in Schulman's office at 12:10 P. M.

"Schulman: Listen, big boy"—

Mr. Corbin: Just a moment. Is there any claim made by the Government that Mr. Goldman was present at all or any part of that conversation?

Mr. Schachner: No claim.

Mr. Walsh: And it won't appear in the record either.

1236 The Court: Very well. Let the record show that.

A. (Continued) And the end of that was missed.

"Hoffman: The upshot is the stock is not work two hundred"—something missed—

"Schulman:" —something missed—"said"—something missed—"and the man said to put it in at fifteen hundred dollars in order to put the wriggle in through Fishbaum. We can't afford less than that, so the consequence is"—something missed.

"Hoffman: I want at as far as you or I are

concerned"—something missed—"we can have this first woman that you had down here, Abramson, and he gives it fifteen"—something missed. 1237

"Schulman: No, I'll tell you what I'll do. Cohen said"—something missed.

"Hoffman: Isn't Abramson the fellow that Cohen had down there at first?

"Schulman: I think so because he told me. I'm going to call up Cohen right now and ask him whether he can get any more money.

"Hoffman:" —something missed—"seventy dollars a month since the assignment was filed. It's almost three weeks. 1238

"Schulman: Technically the sale won't go through.

"Hoffman: Another week's rent, about fifteen or twenty dollars for expenses"—the end of it was missed.

Schulman at this point made a telephone call.

"Hello, who is this, Phil Cohen? Say Phil, on that Bowery stuff, what is the top that you could get? Yes. No, no. Wait a minute. It so happens that you sent over Abramson without my knowing it. At that time I also called in Abramson and Abramson told me fifteen hundred dollars. Right. Now can I let it go to Abramson for fifteen? Yes. No. O. K. Yes. You think it's definite on fifteen? O. K. No, I'll talk to him. Might squeeze him over if I can. If I can't—— You understand what I mean? Because I have a conference with another lawyer here, Mr. Hoffman, and I want to know definitely where he stands and where you and I stand, you know what I mean, as far as value of the stuff. If he can get 17, 18, 19—— Right. O. K."—that is the end. 1239

Then Schulman answered in a telephone call. "Yes. Oh, that uptown stock we have a meeting

1240 before the Judge at 4 o'clock. There is somebody, Eckstein, is trying to put a wrinkle into it. Wolan, he is bothering us. Now if you want to give him a $25 bill and promise him something— I promised him nothing. The hell with him. He's so goddam stupid that I don't want to talk to him"—something missed—"what did she do, have an argument with him there?"

Mr. Walsh: I think this is irrelevant.

Mr. Fielding: I do not think this refers to the subject matter at all.

Mr. Walsh: I will move to strike it out.

1241 The Court: Very well. Let it be stricken out.

Mr. Walsh: Start with Hoffman again.

A. (Continued) "Hoffman: How will that shape up"—something missed—"well, first let's"—something missed—"how much"—something missed—"merchandise we have to consider first of all that forty-five and some odd hundred dollars.

"Schulman: Twenty-five hundred"—something missed.

"Hoffman: Twenty-two something plus three something"—something missed—"expenses are around

1242 $87.00 already"—something missed.

"Schulman: Listen, ninety dollars"—something missed.

"Hoffman: The assignee knows that these men were working on it and put in certain time."

Schulman's reply was missed.

"Hoffman: Wages I can't check, but the wages they charge are equal. Either five or six dollars a day.

"Schulman: All right, ninety dollars.

"Hoffman: Those are the expenses.

"Schulman:" —something missed—"have to make 1243
an application before the referee.

"Hoffman: Ought to amount to at least $100.

"Schulman:" —reply was missed.

"Hoffman: You get $135 for your disbursements, and then you want $125. How much is Goldman"—something missed.

"Schulman:" —something missed—"that's why I say.

"Hoffman: He'd be entitled to reasonable fees for conserving the assets of the estate.

"Schulman: That I know.

"Hoffman: He'd be entitled to some fee by the 1244
court for conceiving the assets of the estate and straightening matters out and holding everything in order. Under the circumstances he put in a lot of time there"—something missed—"he also filed claims for the city to pay over certain monies.

"Schulman:" —something missed—"so he got that much money in his estate you could get.

"Hoffman:" —something missed.

"Schulman: But he didn't get it, therefore"—something missed—"I figured tentatively"—something missed—"I figured tentatively also"—something 1245
missed.

"Hoffman:" —something missed—"insurance there.

"Schulman: Re-insurance.

"Hoffman: Certainly, re-insurance to cover the stock"—something missed.

"Schulman: Look here"—something missed.

"Hoffman: —something missed—"some money all right. Didn't you say he'd give the petition.

"Schulman: I'll tell you what. Let's for the time being make a reserve of $65"—something missed.

246 "Hoffman: Six hundred dollars expense we'll figure includes Goldman for $125. He takes care of Kandell and Cohen. One hundred twenty-five for you to take care of your petitioning creditors. Me, one hundred twenty-five for the attorney for the assignee. The assignee gets twenty-five. That means four hundred fifty. Then there is $35 for your expenses for the petitioning creditors, that's $485. Then in addition to that there are miscellaneous expenses that the assignee has for the insurance premiums and the filing of the assignment, and the certified copies, whatever the case
247 may be; and whatever it may be, about fifteen dollars all around including the premium on the insurance policy. That would be—wait a second, we'll come to that. Let's see, that's three seventy-five, and Goldman for one hundred and twenty-five and yourself. That's three hundred seventy-five and twenty-five for the assignee is five hundred. Then comes your disbursements of thirty-five, that's five hundred thirty-five, fifteen dollars disbursements, that's expenses 550. That leaves $50 over for the other incidental expenses. That brings it up to six hundred. That means there is $500 left for creditors
248 so far as the sale is concerned.

"Schulman: Wait a minute. Nine and three is"—something missed.

"Hoffman: Well, the question is what will the creditors get from the city?

"Schulman: Nine hundred into—

"Hoffman: Into what?

"Schulman: Twenty-five hundred is—

"Hoffman: About twenty-five per cent. Before you're going to figure that, don't forget the landlord doesn't come in from this point on as a general

creditor. He is a preferred creditor during the 1249
time the assignment was in effect.

"Schulman: He has a right to a check.

"Hoffman: He should be paid in full during the time the assignee was in possession.

"Schulman: Thirty-six per cent of twenty-five hundred is"—something missed.

"Hoffman: Thirty-six per cent?

"Schulman: Thirty-three and a third per cent"—something missed—"we'll give them thirty-six plus three hundred, plus the what do you call it, plus the City Sales Tax"—something missed—"get a further distribution"—something missed—"another ten 1250
per cent or twenty-five per cent or forty per cent. When Goldman had that figure"—something missed—"here is 36%. Another 10% of 2500 is $250. So it's 36 and 10 is 46. So shove them through a 40 or 45% and we keep the balance.

"Hoffman: What is the first thing to do?

"Schulman: Now I'll tell you.

"Hoffman: Supposing you get a sixteen hundred buyer"—something missed—"then it will be split three ways?

"Schulman: Naturally.

"Hoffman: And then what do you have to do? 1251
You have to dismiss the petition first?

"Schulman: That's right. The first thing for you to do is get a bill of sale from your man with an affidavit.

"Hoffman: Well then, I'll tell you what you do. You prepare the necessary papers as long as you said you'd do the papers, whatever is necessary to go through with this.

"Schulman: Yes. The only thing is, first get a bill of sale signed by your party.

1252 "Hoffman: I'll have to go up to"—something missed.

"Schulman: Now get from him a bill of sale with an affidavit as to"—something missed.

"Hoffman: Well, it's already catalogued.

"Schulman: Number 2. Get a waiver of all these personal little things.

"Hoffman: Well, I have two affidavits in respect to [redacted] money"—something missed.

"Schulman: Except for this $300, get waivers from the rest.

"Hoffman: Get waivers from the two"—something
1253 missed.

"Schulman: In other words, I want to be left clear. Or give me an affidavit of creditors totalling $2500.

"Hoffman: All right.

"Schulman: When you have that, I'll commence doing my work at once.

"Hoffman: Who is going to hold—

"Schulman: You can hold it.

"Hoffman: When will this client pay over the"—something missed.

1254 "Schulman: As soon as I give him the bill of sale, or as soon as I ask him. Even now, if he asks me to hold the $1500"—something missed—"if you want a receipt I have it."

Hoffman's reply was missed.

"Schulman: Really on the level? Want me to go to your client?

"Hoffman: I mean is there any special form of bill of sale?

"Schulman: No"—something missed.

"Hoffman: When will you let me know whether it's fifteen or sixteen?

"Schulman: Make it $1.00 and other valuable consideration"—something missed. 1255

"Hoffman: He is he going to show if he pays by check, if the client is going to pay by check"—something missed.

"Schulman: He can pay any way I tell him. In other words, the difference between"—something missed—if I were you, I'd put out that bill of sale for, say, $1300,, say twenty fifty is the balance.

"Hoffman: In other words, you want the contract for the bill of sale"—something missed.

"Schulman: Right.

"Hoffman: When you get that affidavit"—something missed—as to a list of creditors"—something missed. 1256

"Schulman: Then when you have that, I'll get started right away with dismissing the assignments.

"Hoffman: Now the next thing is this. If the contract for the bill of sale is $1250, you will get the difference of 250 or 350 as the case may be. How are you going to set certain fees and expenses against that $1250?

"Schulman: Exactly. We can say that we are satisfied ourselves with a fifty or seventy-five dollar bill, you understand? In other words, we can divide so much officially and so much unofficially. 1257

"Hoffman: Then what I have to do—

"Schulman: Get the bill of sale, and let me know whether you got the extra hundred.

"Hoffman: All right. I'm going to hop along.

"Schulman: I can't make it tonight.

"Hoffman: —beginning was missed—"Friday.

"Schulman: Oh, my goodness.

"Hoffman: I got to go over to Brooklyn to morrow night on some case.

1258 "Schulman: Well, then I'll send Cohen unless Hymowitz says no"—something missed—"doesn't know Cohen to any great extent. I'll tell you what, can you telephone?

"Hoffman: I can write him a letter. Then I got to go and get a pass.

"Schulman: Don't forget there are only special visiting hours. On Monday at 11 o'clock.

"Hoffman: Then I'll have to go over to the Department of Correction and get a special"—something missed.

"Schulman: I know Mr."—something missed—

1259 "but since"—something missed—"he may ask me who"—something missed—"it would be better for all.

"Hoffman: It would be all right, but I wanted to see for the money.

"Schulman: Right.

"Hoffman:" —beginning was missed—"about that bill of sale, won't be turned over until you have a certain amount of money in your possession. If he's worried about that"—something missed.

"Schulman: O. K. Let me ask you this. You haven't got the keys now?

1260 "Hoffman: I have got the keys with me, but I hate to let them out of my possession, and I won't.

"Schulman: But I can go over with this man" —something missed.

The words "for less"—the only part of his reply.

"Schulman: It's all yours."

Hoffman then left at 12:45 P. M. At 1:20 P. M. Schulman received a telephone call from someone and stated:

"He's going to get me a bill of sale and Phil Cohen told me that you offered some one four.

Well, listen, you'll have to make the assignment with Phil because Phil don't mean to"—something missed—"you, and in this case he and are one." —something missed—"well, however, as soon as I get the bill of sale I'll let you know. Yes. O. K." 1261

That is the end of that conversation.

Mr. Fielding: Let the record show that I make the same objection to this testimony.

The Court: Yes, and I will overrule that objection and allow you an exception.

Q. Mr. Bodinger, will you now read from the transcript of the conversation on April 21, 1937, which is Government's Exhibit 19-A. A. The conversation began at 5:20 P. M.: 1262

"Schulman: Fishbaum don't have to be straightened out by me or anybody else.

"Hoffman: He said he's going to raise hell if he doesn't get paid for his time at least"—something missed—"he says around eighty-five or ninety dollars, and he wants some money. I told him, as far as I'm concerned, I'll concede the $25 as satisfactory" —something missed.

Schulman's reply was missed. 1263

"Hoffman: No, I'll contribute $25"—something missed.

Schulman's reply was missed.

"Hoffman: No.

"Schulman: You're not married? Well, whoever you support—

"Hoffman: I've got parents, yes.

"Schulman: You support your parents"—something missed—"that $25"—something missed.

"Hoffman:"—beginning was missed—"worked for several days.

64 "Schulman: Well, suppose he went into bankruptcy and didn't get anything.

"Hoffman: If you make a motion to dismiss the petition or withdraw the petition"—something missed.

"Schulman: He made a check.

"Hoffman: Who is 'he'?

"Schulman: He has a claim. He has some claim against the estate for work that he already did"—something missed.

"Hoffman: You think you're satisfied here?

65 "Schulman: Yes." —something missed—"He told me over the phone, he wants $100 outside of his disbursements, and when you and I aren't making anywhere just about the same amount, so what's the auctioneer partners with the lawyer already?

"Hoffman: So what do you want to do?

"Schulman: No, we'll sit down and straighten it out. The question of $25 I wouldn't fight with him, but when he asks $100—

"Hoffman: He's a nice fellow.

"Schulman: He stinks. I'll tell you something. When he was with Harry Rothenberg he was the president of the auctioneers. Treated lawyers nicely, never cheated them"—something missed—"and he
66 was a nice, lovable fellow. Because this kid was a nephew and didn't have anything to do, I suppose he took him into the office. As a matter of fact, he didn't even reach first base as an assistant in the office for that matter, because there were other boys, assistants, who knew the office. He was just a nephew. I'll give you this. For instance, you go to the foreclosure; the chattel mortgage. Actually, you don't have to notify anybody. The chattel mortgage itself gives you a right to peacefully grab, take possession of the chattel which you seek to foreclose.

"Hoffman: No notice is required other than— 1267

"Schulman: What?

"Hoffman: An advertisement to the effect that you will foreclose.

"Schulman: No.

"Hoffman: Yes.

"Schulman: For that matter, you don't even need an advertisement.

"Hoffman: All right.

"Schulman: It's only to play safe that you put in an advertisement and grab it—sell it.

"Hoffman: What do you mean 'play safe'?

"Schulman: That's what the law requires. You, 1268
I tell it to. There is a wrinkle in the law, you can take peaceful possession of a property, with or without notice, and you are through.

"Hoffman: The agreement so provides.

"Schulman: Exactly. But in order to play safe, it's done the way you just said. Why? Because if I sell"—something missed—"an article for $100, then it's at least some fair evidence that it was sold at public auction by an auctioneer, and later I'm more or less protecting myself, largely from any possible claim of a mortgagor or other creditors that it was worth a thousand dollars or five thousand 1269
dollars. I conducted a public sale by an authorized, licensed auctioneer."

Mr. Fielding: Pardon me. I do not think that this is in reference to the matters in hand.

Mr. Walsh: If your Honor please, he should be permitted, I think, to read that. It shows as an indication and characterizes Mr. Schulman for what he is, from this conversation, and I would offer this in as evidence to show a similar incident and the motive and intent and modus operandi of taking

1270 money from the creditors. This is introduced as a similar incident, to show the motive of Mr. Schulman and the others to get as much money as they could in the way as described by this.

The Court: Very well. I will sustain the motion to exclude that part of it. Of course, the other incidents are admissible, but I think the evidence is rather remotely connected and I will sustain the objection and exclude that part of it.

Mr. Walsh: Perhaps if we will read it silently we will find out what is relevant.

The Court: Yes.

1271 Mr. Fielding: The whole page.

The Court: Do you have a copy of it there that I can look at?

(Copy of transcript handed to the Court by Mr. Fielding.)

The Court: (After reading) That is page 3 of this. I will sustain the motion.

Mr. Walsh: It appears that it should go over to page 4, and we will agree that it should start with "Mr. Hoffman," Mr. Fielding?

Mr. Fielding: Right.

1272 A. (Continued) "Hoffman: You mean you represent more dry goods people than Goldman, Malter & Goldman?

"Schulman: Yes. As a matter of fact, for your information, Goldman, Malter & Goldman do not represent any dry goods people.

"Hoffman: Who do they represent?

"Schulman: Kandell. He used to represent"—something missed—"regularly when the collection agents were Endicott-Johnson had a claim in New York and had to go through the collection agent in New York"—something missed—"and you was look-

ing at him you'd think he was an angel"—something 1273
missed—"if Scott were present at the meeting"—something missed—"you understand who is in this particular line also, even far more than if I was present"—something missed.

"Hoffman:" —beginning was missed—"come up to my office and says he represents Hoffman Bros.

"Schulman: He did"—something missed.

"Hoffman: Butler Bros. I know what he said about the association, or in other words, that eventually he would represent Butler Bros and Kandell would get Butler Bros. claim. Is that correct?

"Schulman:" —beginning was missed—"for in- 1274
stance, Kandell is in the same position. Am I right?

"Hoffman: Kandell is no lawyer.

"Schulman: Is Cohen a lawyer?

"Hoffman: No, I heard that he was a lawyer.

"Schulman: No, he never was. Now Kandell, let us say, or Scott get claims from X, Y, and Z. Kandell did have the claim, so their collection man in Buffalo"—something missed—"now to work in Kandell for a fee, Kandell"—something missed—"not being satisfied with that alone, taking care of Sammy Kandell"—something missed—"he called up Jake or somebody else"—something missed. 1275

Hoffman's reply was missed.

"Schulman: Martin come up here"—something missed—"he says you represent Butler, I represent the dry goods association. You as an attorney"—something missed—"ninety-nine out of a hundred know what is going on.

"Hoffman: I don't know yet"—something missed.

"Schulman: Let me finish my story. So I get a hold of a guy like"—something missed—"and things of that kind, you understand what I mean.

1276 and at the same time even if you know or you don't know. Therefore Martin does the work of adjusting the creditors."

Mr. Schachner: Your Honor, at this point I would like to call the attention of the jury to the fact that the first name of one of the defendants is "Martin M. Goldman."

A. (Continued) "He represents Butler Bros."

Hoffman's reply was missed.

"Schulman: He gets, let us say, a hundred dollars. Kandell says therefore fifty, seventy-five, twenty-
1277 five, whatever it is. Actually, Kandell makes more money on a thing like this than anybody else. But what does Martin do? He goes up"—something missed—"and he grabs himself a fifty. That is every day in the weeks. It's five times fifty. Next l"—something missed.

"Hoffman: Yes, I suppose they get"—something missed—"boy, what a racket this is. What are we going to do.

"Schulman: Who is going to see"—something missed—"the bill of sale. I shouldn't teach you this
1278 business. I know if I tell you these things, it stays with you.'

"Hoffman: Those things you pick up sooner or later.

"Schulman: It took me five years, young man.

"Hoffman: With my eyes blind and shut"—something missed.

"Schulman: A few years ago there used to be"—something missed—"they are authorizing—instead of authorizing me to sell the stock with or without notice to the creditors. I didn't notify creditors"—something missed.

"Hoffman: The truth was he got a hold"—something missed—"you can't change it like some of the fellows"—something missed. 1279

"Schulman: At least ask for an inspection of the premises."

Hoffman's reply was missed.

"Schulman: I think it's funny business every bankruptcy petition"—something missed—"those things took me years"—something missed—"a seventy-five dollar"—something missed.

"Hoffman: See if that thing is in order.

"Schulman: So you said you'd get on to it. It took me years to get on. Let me tell you another thing. I don't know now how the average practitioner shows as much honesty and sincerity as you have exhibited in this case. 1280

"Hoffman: There is a case we are able to recover about twenty thousand dollars of the stuff, and then a restitution was made to the extent of about eight thousand dollars in cash. I can get myself a nice fee."

Mr. Fielding: Obviously, that has no connection with this.

The Court: Yes.

Mr. Fielding: I ask that it be stricken out. 1281

The Court: Yes. Very well, I will sustain the objection. Strike that out.

A. (Continued) "Schulman: How often do you get these cases?"

Mr. Fielding: The same goes for the next three or four statements.

Mr. Walsh: How far down do you want to go, Mr. Fielding?

Mr. Fielding: The entire conversation down to

1282 "(Conversation interrupted by someone in the office who wants stamps)."

Mr. Walsh: You mean "Schulman: You have here a list of creditors.

"Hoffman: Yes."

From there on?

Mr. Fielding: Yes.

The Court: Very well. It will be stricken out down to that point.

What is the question that it starts from?

Mr. Walsh: It is stricken out from "Schulman" down to "Schulman: You have here a list of credi-

1283 tors."

The Court: Very well.

A. (Continued) "Hoffman: Yes.

"Schulman: I mean to say, on the list of creditors you indicate any other liability of personal loans except those $300.

"Hoffman: No. You haven't got the claim of the mother of the assignor or sister.

"Schulman: O.K.

"Hoffman: In that connection, I have an affidavit—

1284 whether she wants to waive the claim for about $1200"—something missed—"and the mother"—something missed—but the sister in her affidavit says that the mother will waive the claim.

"Schulman: We don't care about that.

"Hoffman: I made that bill of sale subject to a second mortgage or conditional bill of sale which is on the cash register. Is that all right?

"Schulman: How much is the balance?

"Hoffman: I think there is a balance due on the cash register of about $60.

"Schulman: All right, that's fine.

"Hoffman: You say you're getting sixteen hundred? 1285

"Schulman: Fifteen or sixteen hundred.

"Hoffman: Listen, bum, is there any more that you're getting out of this—on the level? I mean without a smile.

"Schulman: Seriously, I'll show you. You shouldn't have any doubts. I'm glad that you're frank about it.

"Hoffman: Yes, I want to be frank about it.

"Schulman: The thing is worth fifteen hundred dollars and I'm not getting a dime more or less. The only thing is this. Fishbaum said it—I don't know 1286 how sincere he is about it— that there is somebody that wants to give sixteen. I want to give it to my man and so I'll put it up to him. I'll say, I don't want to let anybody grab it. I want you to give him sixteen."

Mr. Walsh: May I interrupt here, that the name "Fishbaum" means "Wishbow" because they are evidently talking about the auctioneer.

Mr. Fielding: I will concede it.

A. (Continued) "Hoffman: But the way it is, if it's only worth fifteen, then you're sticking him if you are asking him to give you sixteen. Now if he gives you sixteen, 1287 he's not doing it just because your name is Schulman. It must be worth sixteen to him.

"Schulman: No.

"Hoffman: Isn't that the logical conclusion?

"Schulman: No. There is always room for the $100 on top.

"Hoffman: Well, why wouldn't the bum offer that in the first place?

"Schulman: No. I'll tell you why. They figure

1288 they should make two hundred or two hundred fifty on the stock. They're entitled to it just like you're entitled to one hundred or so a week. So they're entitled to their dough. They work for it. They're getting caught every day in the week."

The Court: What page are you on now?

The Witness: This is the bottom of page 7.

The Court: Very well. We will take a few minutes' recess of this case while I call the calendar for the day.

The jury may be excused for a few minutes.

(Short recess.)

1289

By Mr. Schachner:

Q. Mr. Bodinger, will you please read again from the bottom of page 7 where it says "Schulman"? A. Yes, sir.

"Schulman: No. I'll tell you why. They figure they should make two hundred or two hundred and fifty on the stock. They're entitled to it just like you're entitled to one hundred or so a week. So they're entitled to their dough. They work for it. They're getting caught every day in the week. So they figure I'll make a half. I don't know how good

1290 Fishbaum's man is for sixteen hundred dollars. If it's necessary to meet competition, he will. I'll give you an idea"—something missed—"around twenty-four now this competition for the lower end, just like Fishbaum says he's give sixteen. I says, counsellor, somebody is giving twenty-six." —something missed—"suppose he goes six hundred fifty or seven. He says, when it comes to competition and I want that stock, make it thirty-six, but I want it, see.

"Hoffman: What's the reason for that?

"Schulman: Simply because.

"Hoffman: In other words, if it's a good thing, he wants to let the other fellows in the same business know that when he wants a certain stuff he'll get it or he will make them pay for it? 1291

"Schulman: No. The first supposition was correct. In that particular stock, the point is that he has some stock that will fit in nicely with that stock. In other words, it's worth a few dollars more than it is really worth. It's worth to him a few dollars more because it fits in with the stock that he has. They buy stock every day in the week. So he says, because of the competition, I'll give you sixteen.

"Hoffman: Listen, maybe this guy—maybe he'll go to seventeen. 1292

"Schulman: No.

"Hoffman: I'm only kidding.

"Schulman: I know, but I'm giving you a serious instance. When I do business with them, I want him to make a dollar. There's no use of being"—something missed—"if I have to knock out my own people for whom I"—something missed.

"Hoffman: You say he's going to pay $1600?"

Schulman's reply was missed.

"Hoffman: He's going to pay it?" 1293

Schulman's reply was missed.

"Hoffman: How the hell is this going to be split up? You say Goldman is going to get one hundred and a quarter, is that right?"

Schulman's reply was missed.

"Hoffman: We'll sit down and give a few dollars to Fishbaum, right?

"Schulman: We'll also take care of any contingency that you may be responsible for, such as the rent. You will meet the charge.

"Hoffman: Kolman said, he said, I'm not giving

1294 the keys up until there is an order of the Court which discharges my liability as an assignee from the bond and in every other respect.

"Schulman: Right.

"Hoffman: Well, she doesn't want to get into any of these complications.

"Schulman: I want him to be that way because after all he is a lawyer and I'm a lawyer. Then we'll also take off something for"—something missed.

"Hoffman: You mean these three monkeys that you got there, these bums?

"Schulman: Yes.

1295 "Hoffman: I thought you're taking care of them from your end. Wait a second. I thought you're taking care of them from your end.

"Schulman: Not from my end. I'll tell you why.

"Hoffman: Wait a second. If I'm figuring to get one hundred and a quarter, and you also, and Goldman is going to get $25, what the hell is Goldman getting for all the time he spent?

"Schulman: All right. If you want to give him twenty-five, all right.

"Hoffman: If I give him twenty-five, so all I got left is one hundred. So in order to take care of

1296 Gabe Fishbaum, I have to cut off some money. So in the final analysis I'll get out of this about half of what I would have gotten in an ordinary administration.

"Schulman: But if you wound up in bankruptcy you would have gotten fifteen bucks.

"Hoffman: Listen, for the work that was done up to the filing of the petition, I'd get fifty dollars with banks.

"Schulman: What did you do?

"Hoffman: I prepared whatever papers were necessary.

"Schulman: Usually"—something missed. 1297.

"Hoffman: An order of sale. How about the preparation of the assignment itself?

"Schulman:"—beginning was missed—"everybody knows.

"Hoffman: How about the time I spent going up to Rikers Island, spending about three hours, from nine o'clock at night to twelve o'clock?"

Schulman's reply was missed.

"Hoffman: There wasn't"—something missed—"there was a hurry there in order to conserve the assets.

"Schulman:" —beginning was missed—"takes me 1298
five minutes.

"Hoffman: You got to wait for a ferryboat to come in and then you got to wait on the other side for a ferryboat to leave. You can't take a ferryboat every two or five minutes.

"Schulman: The Court will allow"—something missed.

"Hoffman: How about the time spent in the creditors' meeting? How about the time spent in the store premises in connection with the appraisal? You don't think I'd get $50 at least?

"Schulman, in telephone conversation, stated: 'No, 1299
he didn't get here. You call me tomorrow, around 2 o'clock. O.K. No, I tell you I think we are nearing a settlement where you can get the premises within even less than a week. Well, I wouldn't say that, within about a week. Yes. Right.'

"Schulman: I still want to show you why you wind up"—something missed—"in other words, if we give creditors 40% that's $1000, isn't it?

"Hoffman: 40 per cent is a thousand dollars.

"Schulman: Say we give Fishbaum $100.

1300 "Hoffman: How are you going to give Fishbaum $100 where we're figuring one hundred and a quarter at least?

"Schulman: Let us say"—something missed.

"Hoffman: You're right. There are other expenses. There is a bond. I think we figured the assignee expense at $50. That's $1175.

"Schulman: Right.

"Hoffman: Let me see, that would leave how much? That would leave about—how about some reserve for the landlord. The landlord is raising hell about the store.

1301 "Schulman: How much is that?

"Hoffman: Seventy-five dollars a month rent.

"Schulman: Is there a month?

"Hoffman: Certainly. March 24, and now the whole month of April. So he is a preferred creditor for more than a month.

"Schulman: So figure him for $75. That's twelve fifty. That leaves $350 for the three of us, am I right?

"Hoffman: Yes.

"Schulman: I didn't figure anything for the bank.

1302 "Hoffman: Listen, you can take care of these guys.

"Schulman: No.

"Hoffman: Goldman is getting $25 and he has $25 expenses.

"Schulman: Do you want to listen for a minute? If I can get him fifty"—something missed.

"Hoffman: Why give him $50? How about $30. Ten dollars a piece. So if you give them $15 a piece, there is a hell of a lot of difference between fifteen and ten?

"Schulman: Yes. 1303

"Hoffman: What's the difference, a five spot?"

Schulman's reply was missed.

"Hoffman: How the hell are you going to work that?

"Schulman: Just a minute. I'll show you something. Take off the $1250. Let's say $75.00 from the creditors.

"Hoffman: Which creditors?"

Schulman's reply was missed.

"Hoffman: That's too much. If they get $50 it would be plenty.

"Schulman: Just let's figure that way. I figured 1304
I had thirty or thirty-five dollars cash expenditures."

Hoffman's reply was missed.

"Schulman: Wait a minute. That makes $1360, right?

"Hoffman: Right.

"Schulman: That leaves you $240 between three fellows, let's say. That's $80 a piece"—something missed—"$300.

"Hoffman: For the claim against the city.

"Schulman: That's $180 a piece.

"Hoffman: I see. Leaving off the other disputed 1305
claim of about $200 that's against the city. There is a disputed claim of about $200. You mean leave it go?

"Schulman: Leave it go. I'll tell you another thing.

"Hoffman: Settle it for $50.

"Schulman: You mean give the client the $50?

"Hoffman: No, give the city the $50.

"Schulman: Which $300? You mean that's in dispute? Oh, I see what you mean.

"Hoffman: There are two distinct claims against

1306 the city. One that apparently is a good one. Vouchers that were accepted after the disturbance, after the incident for which the debtor was arrested; and another group of claims which were as a result of vouchers received before he was arrested, and which I think was the subject matter of the arrest.

"Schulman: Right.

"Hoffman: So one apparently is undisputed and the other one is disputed.

"Schulman: Yes.

"Hoffman: So in connection with the claims that are not disputed, that I think amounts to $250, $300.

1307 "Schulman: Is there a sales tax due from Hymowitz to the city?

"Hoffman: That may be. I think you have it on the list there.

"Schulman: There is no amount.

"Hoffman: Well, we don't know. It may be a couple of dollars.

"Schulman: I said that from the $300 that you do collect a couple of dollars"—something missed.

"Hoffman: I see.

"Schulman: I'm only figuring the city sales tax which is $300. If we get five, that's fine.

1308 "Hoffman: You mean you divided three ways whatever is received from the city.

"Schulman: And if we only get three, three hundred from the city, we make $180 a piece, which is more than what you would have made in any other event.

"Hoffman: How are you going to get the money in from the city, because under this bill of sale, he sells only the fixtures and the merchandise.

"Schulman: Right.

"Hoffman: That leaves the claims against the city.

"Schulman: Could you get him to sign"— 1309
something missed.

"Hoffman: I didn't get it. I was only told to get the bill of sale and the affidavit. So I have to get another instrument?"

Schulman's reply was missed.

"Hoffman: That I can mail in to him and ask him to send"—something missed.

"Schulman: Write out and say sales"—something missed.

"Hoffman: You mean it may not be assignable?

"Schulman: Not that kind.

"Hoffman: Well, let me ask you this: In case 1310
he asks me, make a claim against the city.

"Schulman: If the check would be made payable to the assignee.

"Hoffman: When he is discharged, he must hand that over to the assignor, isn't that so?

"Schulman: Yes.

"Hoffman: That would be one of the provisions.

"Schulman: I don't know just how the city will treat it. I don't know.

"Hoffman: I mean this: Supposing we make an application to withdraw the assignment proceedings 1311

"Schulman: Right.

"Hoffman: But in the interim, the city pays over to the assignee the money.

"Schulman: Yes.

"Hoffman: The order to dismiss the assignment proceedings would provide for a turnover of the money to the assignor, isn't that so?

"Schulman: Correct.

"Hoffman: Whatever the case may be?

"Schulman: Yes.

"Hoffman: Now when is this fellow Abramson going to pay over the money?

"Schulman: His money is as good as in your pocket.

"Hoffman: You want me to hold this bill of sale, or what?

"Schulman:" —beginning was missed—"so far my petition, it's in form"—something missed.

"Hoffman: Wait a second. You think I'm going through all this paper work for eighty dollars or one hundred dollars? You think I'm going to bother much more with this? I'm sick and tired of this.

"Schulman: I'll tell you what I'll do. Martin or I will do the paper work and deliver it to your office.

"Hoffman: Now so far as the money on that is concerned, who is going to hold on to the money?

"Schulman: Ordinarily—

"Hoffman: I'll tell you frankly, I'd like to hold the money if I gave you a receipt for it.

"Schulman: If the petition should be dismissed"—something missed.

"Hoffman: The only thing is, I hate to let it slip out of my hands. Is there any way it can be deposited in a special account to be withdrawn only by you or myself?"

Schulman's reply was missed.

"Hoffman: As far as myself, the whole amount involved is $80. If anything goes wrong, I have got to make good to the assignee, and I'll tell you frankly, so far as Fishbaum is concerned, I have got to look out for him too. That is the way I do things, because when I told Fishbaum that he'd be paid for his time and for his expenses, that he disbursed, he's been damned decent. I know he's worked hard.

"Schulman: Let me ask you this." —something missed—"understand? So, I got more at stake than you got. I'll tell you why"—something missed—"take

care of the creditors. I don't want to let my peti- 1315
tion be dismissed until"—something missed.

"Hoffman: " Listen, you have certain things to worry about and so have I. Is there any way that we could deposit this in an account just to your name and my name?

"Schulman: I'll tell you what I'll do. When I get the money, I'll give you a receipt for $1250. The balance"—something missed.

"Hoffman: Can you get Fishbaum's money and Kolman's money and my money?

"Schulman: In adyance"—something missed.

"Hoffman: In connection with the balance"— 1316
something missed.

Schulma reply was missed.

"Hoffman: Let's see how it will work out.

"Schulman: You got to have some kind of trust in somebody.

"Hoffman: As far as myself, the whole thing amounts to eighty, ninety dollars.

"Schulman: I'm not interested in yourself or myself. I have too many similar transactions where I can afford to have creditors or lawyers, or auctioneers. A little fellow like Fishbaum never knows"— 1317
something missed—"the whole city through the underworld channels or among the auctioneers' channels would know. What's more, I'd last exactly thirty minutes with that kind of a reputation. If I tell you $1000, it's $1000, you understand? You got to have some kind of trust in this thing"—something missed.

"Hoffman: When do you expect to get the money? I'll talk it over with Cohen. When do you expect to get the money from the buyer?

"Schulman:" —beginning was missed—"call up

318 my party and tell him"—something missed—"I'll give you a receipt for $1250 to be applied toward the settlement with creditors and the distribution of whatever there may be.

"Hoffman: Because I mean, you get $1250 and the creditors get so much, and then, not that you'd do it. Goldman might say, the hell with this guy Hoffman, you know what I mean?

"Schulman: That's exactly what I think. You're all right and don't need to have any worries about it because I'll be in control in this picture rather than Goldman. I do tell you this: You will have no 319 difficulty with him or me, but I'm not even suggesting it because in this picture, let us say it so happens that I'm in the middle. Maybe it is to be that way. I can have the money in less than an hour.

"Hoffman: I go to get back. I got an appointment at the office at 6:30. Saturday night I was in the office until 10 working on adjustment papers. All day Monday"—something missed.

Schulman's reply was missed.

"Hoffman: No, a bulk sale.

"Schulman: Why do you have to work so hard?

320 "Hoffman: No, it wasn't that, about fifty papers, affidavits.

"Schulman: In substance, it was repetitions of one thing.

"Hoffman: No, no. Some were claims there. There were several claims held by the same party, and they had to be"—something missed.

"Schulman: Well, I'll tell you, if you want to send"—something missed—"petition"—something missed—"reorganization"—something missed—"or whatever it is, as a rule, ninety-nine out of one hundred, secured proof of claim, unsecured proof of

claim, all that"—something missed—"call me up and I'll give you the"—something missed. 13

"Hoffman: In other words, you want to give me a receipt for"—something missed—"I think I made it $1200."

Schulman's reply was missed.

"Hoffman: I'll tell you frankly, because in the first place, all"—something missed—"without even getting the money the fellow executed a bill of sale, and as a matter of fact"—something missed.

"Schulman: I don't want to have any possible thought on your part"—something missed.

"Hoffman: You say you can get the money at an hour's notice? Well, don't get it now because I'm going to beat it. I'll tell you what I'll do. Are you going to be in the office around 12 or 1 o'clock tomorrow, and you can get it in an hour's notice? 132

"Schulman: I can telephone him now and he'll be here tomorrow.

"Hoffman: I'll be here with the papers and fill in his name. You say this form is—

"Schulman: Very good. I just want to show you something. Ordinarily, why would that fellow give me $1250 and $1600 without even a bill of sale or anything. 132

"Hoffman: Wait a minute, here's another thing. I had this run-in with Goldman and Goldman is sore, and he may want to be sore, and then there is Kandell and then you told me what Kandell would do to try and strip me because I don't know much about it."

Schulman's reply was missed.

"Hoffman: You said that if we made those arrangements at the meeting. You remember at that first meeting? They'd take advantage of every situation.

1324 "Schulman: I told you all that just to keep you, how you should look at things. But I didn't tell you that for the purpose of"—something missed.

"Hoffman: All right. I'll be down"— something missed.

Schulman's reply was missed.

"Hoffman: From the city sales tax"—something missed.

"Schulman: Would that be all right with you?

"Hoffman:" —beginning was missed—"all right, we'll work out some receipt that will be satisfactory.

1325 "Schulman: I'll tell you what you do if you like, so as not to have any"—something missed.

"Hoffman: All right, I'll dope it out. Try and get it tonight, or the first thing tomorrow morning. Good night. You're going to call your man and have the money over.

"Schulman: O. K.

"Hoffman left the office at 6:14, P. M."

The Court: I have an appointment for about ten minutes so we will now take a short recess.

(Short recess.)

By Mr. Schachner:

1326 Q. Will you now read from Government's Exhibit 18-A, which is the transcript of a conversation of April 26, 1937? A. Yes, sir.

(Reading) "(The conversation began at 5:07 P. M.)

"Hoffman: It was all I could do to get down here.

Schulman's reply was missed.

"Hoffman: Is that that colored fellow down from Georgia way?

"Schulman: Five to four. Was your man served with a subpoena or anything?

"Hoffman: No, not that I know of. 1327

"Schulman: Look, did you have subpoenas issued or did the court issue it.

"Hoffman: So you didn't give it to him. The marshal wouldn't send it"—something missed—"but you didn't?

"Schulman: I don't know.

"Hoffman: You don't know whether you gave it?

"Schulman: I didn't hand it"—something missed.

"Hoffman: What do you mean"—something missed—"the petition and then they issued a subpoena at the time the petition is filed. Martin Goldman wouldn't have that served unless you okayed it. He 1328
wouldn't follow this unless you told him what to do. No, I mean so long as they came up, he wouldn't go through until you okayed it.

"Schulman: Right.

"Hoffman: Did you get the dope?

"Schulman: Yes.

"Hoffman: I'll tell you. I spoke to Gabe Wishbow and he made his peace with you, and he says that that would be straightened out. You told him it would be straightened out when the whole thing was closed and whatever monies were to be divided 1329
would be divided and he would be satsified?

"Schulhan: Right.

"Hoffman: So I spoke to him and he got more"—something missed—"about it than I did. I asked him what to do and he suggested that the $1600 be deposited to our account.

"Schulman: He suggested that?

"Hoffman: Call him up and see.

"Schulman: I think he's foolish. We should deposit $1600? You don't want to let your man. Him, he's supposed to have more sense than to make a crack like that. I think he's insane.

1330 "Hoffman: Get the guy over here"—something missed.

Schulman's reply was missed.

"Hoffman: For what? For the bill of sale? You'll give me a receipt for the bill of sale?

"Schulman: Yes.

"Hoffman: And that bill of sale won't be turned over until when?

"Schulman: Until first, the petition in bankruptcy is dismissed; until the assignment is dismissed; and until I receive twelve hundred or twelve hundred—

1331 to be distributed to a list of creditors pursuant to an initial listing made by Mr. Robert Hoffman"—something missed.

"Hoffman: How about the releases?

"Schulman: All checks made payable that is to be sent to the creditors hereunder are to be endorsed, 'Same is in full payment of any and all claims.'

"Hoffman: That doesn't have the status of a general release. Where is that release coming through, that forty per cent business?

"Schulman: All checks are to be so endorsed and

1332 payments to be made to all creditors.

"Hoffman: That's right. Kandell and Cohen and Goldman can get those consents from most of them and you can get them from the balance.

"Schulman: O. K. You're right.

"Hoffman: Now what about your four hundred?

"Schulman: Three hundred.

"Hoffman: Four hundred. Sixteen and twelve."

Schulman's reply was missed.

"Hoffman: What about depositing that?

"Schulman: That goes"—something missed.

"Hoffman: Can I get a note for the goddam thing

for my share. I mean for my share and Wishbow's share?" 1333

Schulman's reply was missed.

"Hoffman: I better call Wishbow on the wire because I told him I wanted his O. K. before I went ahead. I don't like to do anything without"—something missed.

Schulman's reply was missed.

"(At 5:13 P. M. Hoffman made the telephone call.)

"Hoffman: Wishbow? Jake. Say, I'm over in the office and there has been some talk about that money in connection with the sale. Now I suggested to him, as you said, that the full amount of 1334
sixteen be put up and deposited in a joint account between him and myself, and he says that is out of the question. He then said he would give me a receipt for the $1200, you know, which is the amount set forth in the bill of sale. Hello. And I suggested that he give me a note to cover your share, the assignee's share, and my share out of the $400. You see what I mean? So he says he wouldn't do that. You got any other suggestions? I don't know much about this business. He says he has the money. Wait a second."

1335

Apparently speaking to Schulman.

"Wishbow wants to know whether you'll pay us our proportion of the share now?

"Schulman: No. I wouldn't touch a dime out of this money and nobody else will.

"Hoffman: (Over the telephone) He says he won't pay that out now. That's what I want to know. I want to know why I can't hold the sixteen hundred dollars and give him my receipt. Hello. Give him my receipt for the twelve hundred dollars or even give him a receipt for the sixteen. I don't

1336 know. (To Schulman) You want to talk to him?

"Schulman: No, I don't want to.

"Hoffman: Talk to him. He's all right.

"Schulman: I don't want to talk to him.

"Hoffman: (Over the telephone) Hold the wire a second. (To Schulman) Go on, talk and see what it is.

"Schulman: He tells me over here that I'm going to give a receipt for sixteen hundred.

"Hoffman: (Over the telephone) Hello, wait a second. This isn't Jake. Wait a second. Hold the wire.

1337 "Hoffman: (To Schulman) He wants to know whether you want to talk to him.

"Schulman: Explain to him"—and then apparently he took the telephone—

"Hello. Since when do you want me to open a joint account in this case? Yes. You don't see why not? You mean you can tell a lawyer why you can't see why it shouldn't be a joint account? Why? For Christ's sake, this fellow Hoffman handled less than half a dozen assignments in his life, can see the point in two minutes and you can't after being years with Harry Rothenberg? I'm

1338 going to make distribution to my creditors, and the twelve hundred dollars you're going to be given a receipt for that. If I'm not no good in that regard, don't do any business with me. I'll tell you this much. If you ask any auctioneer with brains how to handle it—

"Hoffman: Wait a second, let me talk to him. (Takes telephone) Hello, Gabe, listen. I tell you what. I think it would be all right to get the receipt from Schulman and then in connection with the four hundred that he is holding—wait a second

now—the four hundred that he'd be holding, to- 1339
gether with what ever allowances would be made out of the twelve hundred, then we could all meet at a certain time and distribution would be made. I know I'll have to do running around. What the hell! The only thing is I don't want to do anything unless you O. K. it. That's all. Wait a second. I don't want you to waive anything. (To Schulman) Can he get his disbursements?

"Schulman: He can't get a dime. I won't take my disbursements. I got disbursements too. What's he talking? I got disbursements too. I wouldn't 1340
take a postage stamp.

"Hoffman: I don't know what to say.

"Schulman: If he don't trust Martin Goldman or me or you, tell him to go to hell. That's all.

"Hoffman: (Over the telephone) Wait a second. (To Schulman) Is his disbursements to come out of the twelve hundred?

"Schulman: The disbursements come out of the whole pot that we mentioned here a while ago.

"Hoffman: (Over the telephone) He says you'll have to wait for that.

"Schulman: First you have to dismiss the bank- 1341
ruptcy.

"Hoffman: (Over the telephone) He wants to dismiss the bankruptcy, dismiss the assignment, and then pay the creditors their forty cents on the dollar.

"Schulman: Wait a second. You have to get his consent to a dismissal of the petition in bankruptcy.

"Hoffman: He says you don't require that. Now how about the dismissal of the petition in the assignment?"

Schulman's reply was missed.

1342 "Hoffman: Hello. He thinks that it isn't necessary. Listen, I'm not arguing the point. You understand, you can say I didn't want to turn over any papers unless I got your consent. In other words, at least the disbursements you want.

"Schulman: I wouldn't give him a dime.

"Hoffman: Why don't you give him the disbursement?

"Schulman: I can't. Should I take from my $35?

"Hoffman: (Over the telephone) Gabe, I think it will be all right. You know"—something was missed—"Wait a second you can't dismiss the peti-
1343 tion one, two, three. You got to make a motion in order to show cause so it still will take two days, right? Yes. I don't know what to do. You better straighten it out with him. He says that he will pay you the disbursements and also a certain amount. Wait a second.

"Schulman: I don't take any credit for myself. I told him the other day sitting there at the table with you"—something missed—"He wants to be a * * * let him be.

"Hoffman: (Over the telephone) You hear what
1344 he said? He said the same as he told you. He said there isn't any fixed amount that you're to get above your disbursements; that he and Martin Goldman and you and myself will sit down at a table when this thing is disposed of; and that will all be gone over and you'll be satisfied. Listen, as far as I'm concerned, here's the way it was explained to me. First, wait a second. The disbursements are paid in full. Hello. The disbursements are paid in full. Then after that Martin Goldman and Schulman and myself are to get an equal share. Before we divide that three ways, you are to get

a reasonable amount for the services which you rendered as an auctioneer. In addition to the disburseiments, and that will be argued out over the table. Hello. Is that satisfactory? All right then. It's all right to get the receipt for the bill of sale? All right." 1345

The telephone conversation ended at 5.20 p. m.

"Hoffman: I don't want anybody to say"—something missed.

"Schulman: So we'll dictate a receipt."

Schulman then called in his stenographer and dictated:

"Received from Robert Hoffman, 1270 Broadway, receipt covering"—and a good deal of the dictation was too low to be heard then, and continued: 1346

"signed and acknowledged. And to transfer to the purchaser of said property pending dismissal of bankruptcy proceedings"—and the balance was missed.

"Hoffman: Wait a second. Aren't we supposed to get a fee out of that? A. $2,500 fee?

"Schulman"—something missed—"read that back please."

Then the stenographer read back but it was too low to be heard.

"Hoffman"—something missed—"technically speaking"—something missed. 1347

"Schulman: All right leave out the"—something missed.

"Hoffman: This is another"—something missed.

"Schulman: I'll sign the first part and he'll sign the last part, and you can make it in triplicate.

"Hoffman"—something missed—"I mean call him up anyway.

"Schulman: I think his name is Louis Wein."

5:30 p. m. Schulman made a phone call.

1348 "Hello. Mr."—something missed"—get your papers ready"—something missed—"you want to put"—something missed, and the balance of the conversation couldn't be heard.

"Hoffman: I had in mind originally when you made the suggestion"—something missed.

"Schulman: Yes.

"Hoffman: In other words, she has got the papers to dismiss the petition and also the assignment.

"Hoffman: This is the first night I'm going home early.

"(During the balance of"—

1349 Mr. Walsh: That is irrelevant.

Mr. Fielding: I think that is.

The Court: Eliminate that.

A. (Continuing) "Hoffman: You mean you banked that money without"—something missed—"who is this fellow Wein?"

Reply was missed.

"Hoffman: You mean he works for"—something missed—"He uses the name of Louis Wein. Who is he and what is he"—something missed—"is that

1350 340 Grand Street"—something missed—"430 Grand Street"—something missed—"what do you mean, the distribution of the money"—something missed.

"Schulman"—something missed—it will be ready tomorrow, everything.

"Hoffman: "You mean we can obtain the assignment"—something missed.

"Schulman: Miss, what's that word in the last paragraph?"

Schulman then apparently dictated some additions or changes to the receipt which could not be overheard.

Mr. Walsh: That is out.

A. (Continuing) "Hoffman"—something missed—"I'll 1351
tell you, the expenses are pretty big. Martin Goldman worked it out and the other fellow"—something missed—"is there so much work"—something missed.

"Schulman: Would it be all right if we"—something missed.

"Hoffman: Take that off.

"Schulman: Suppose I give you a receipt"—something missed.

"Hoffman: The order discharging the assignee"—something missed—"purchase it without any fear of"—something missed. 1352

"Schulman"—something missed—"your man from removing it to a public warehouse.

"Hoffman: A public warehouse and transportation and all that"—something missed.

"Schulman: If your purchaser"—something missed.

"Hoffman: And they gave me a receipt for it I, wouldn't worry about it.

"Schulman: For each and every item. You can check this catalog and double check it."

Hoffman's answer was missed.

"Schulman: It's a fair deal.

"Hoffman: I'm talking about responsibility. 1353

"Schulman:"—something missed—"I knew that you'd be here and all that but"—something missed—"because you don't fuss around with these things.

"Hoffman"—something missed—"true, but"—something missed"—you say Goldman will have the signature tomorrow?

"Schulman" Tomorrow.

"Hoffman: I'll make sure that"—and that is all that was heard.

The Court: Any further direct examination of this witness.

1354 Mr. Schachner: That is all.

Mr. Fielding: I would like to renew my motion again to strike out the testimony on the ground that only parts of the conversations were transcribed and read.

The Court: I will overrule the objection as a general objection. It is true that parts of the conversation are unintelligible, and if a specific objection be made to any particular one, upon that ground, upon its face that it was not unintelligible, why, I will sustain the objection to that. As I announced originally upon the ruling, there are parts of the
1355 conversation that are competent to go to the jury and the weight of those conversations is for the determination of the jury. So as a general objection I will overrule your objection and allow you an exception.

Mr. Fielding: Exception.

Of course it will take some time to pick out individual parts where the garbling is so evident that perhaps an objection like that would be sustained. Can't I reserve my right at this time?

The Court: Yes, you may reserve your right to any particular part or any particular conversation
1356 or part of a conversation to which you wish to move to exclude it at any time. I will permit you to do that and I will hear you. As I stated, parts of this conversation, I think, are competent. There are parts of that that I think are irrelevant and immaterial and without any weight one way or the other, but upon a general objection, part of it being competent and part not, I will overrule the entire general objection with leave to you or right to you at any time, if there is any particular part of it that you desire to move to strike it out, and I will permit you to make the motion.

Mr. Fielding: I have no further questions. 1357

The Court: Any questions of the witness?

Mr. Corbin: No.

The Court: Very well. Stand aside.

(Witness excused.)

LOUIS ABRAMSON, called as a witness on behalf of the Government, being duly sworn, testified as follows.

Direct examination by Mr. Walsh:

Q. Mr. Abramson, what are your duties in life? What do you do? A. I was formerly an auctioneer. 1358

Q. And specifically in 1937 were you an auctioneer? A. Well, I purchased stocks of merchandise.

Q. Well, could I classify you as such, an auctioneer? A. Well, if you want to, yes.

Q. Well, would that be correct? A. No, it wouldn't.

Q. What were you? A. Just a cash buyer at that time.

Q. And you attended, of course, auction sales? A. Yes, sir.

Q. And purchased the stock of a store that had a little difficulty because it couldn't pay its bills, etc:? A. Yes, sir.

Q. That is what your business is? A. Yes. 1359

Q. And where was your place of business, sir? A. At 430 Grand Street.

Q. And was anybody associated with you? A. At that time I was associated with my father, and there was another gentleman by the name of Mr. Samuel Lieberman.

Q. Lieberman? A. Right.

Q. Do you know a man by the name of Jacob Schulman? A. Yes, I do.

Q. And how long have you known him? A. Three or four years.

Q. Prior to 1937? A. No.

1360 Q. When did you first meet him? A. Oh, around 1936, 1937.

Q. And do you know a man by the name of Morton Goldman? A. I have met the gentleman.

Mr. Walsh: There is no question about the identity of any of these gentlemen on that question, is there?

Mr. Fielding: Not as far as Mr. Schulman is concerned.

Q. Do you know Mr. Morton Goldman, a lawyer? A.
1361 Yes.

Q. And how long have you known him? A. About the same time.

Q. Right in around that time? A. That is right.

Q. That you met Mr. Schulman? A. Yes.

Q. And do you know a man by the name of Mr. Theodore Goldman? A. I don't think I have ever met him; no.

Q. Now, do you know a man by the name of Mr. Kandell? A. Yes, sir.

Q. And did you also know him in and around the same time that you knew Schulman and Morton Goldman? A. Well, I met Mr. Kandell before I met them gentlemen.

1362 Q. About how long prior to that time? A. Oh, about two or three years prior to that time.

Q. Do you also know a person by the name of L. Wein? A. Yes, sir.

Q. And who is he? A. He happenes to be a brother-in-law of mine.

Q. And during 1937 how old was he, if you know, at that time? A. I should judge around 20, 21.

Q. And during March specifically—and April and May, up to and including June—where was Mr. L. Wein? A. At the University of Salem, West Virginia.

Q. Now did you ever, Mr. Abramson, use the name of L. Wein in the purchase of stock of a store? A. I have a number of times. 1363

Mr. Walsh: That is all.

Cross examination by Mr. Fielding:

Q. Did you inspect this stock at the Army and Navy Store—

Mr. Schachner: Your Honor, I object to this question as not being proper cross-examination. Mr. Abramson has not been asked that on direct examination. 1364

The Court: Does the rule of law apply in criminal cases that you may cross-examine only about things brought out on direct examination.

Mr. Schachner: Your Honor, we shall withdraw the objection, and we can then cross-examine the witness ourselves. We have no objection.

The Court: Well, I will let you, on redirect, inquire about things brought out on cross-examination, but now if you mean with reference to—

Mr. Walsh: We withdraw the objection.

The Court: Very well.

(Question read.) 1365

Q. (Continuing)—in question that belonged to Hymowitz? A. Yes, I did.

Q. At whose request did you examine that stock? A. Well, I think it was Mr.—the concern of Cohen & Kandell.

Q. And Kandell? A. Cohen or Kandell.

Q. It wasn't Mr. Schulman? A. No, it was not.

Q. And how much of an experience have you had in this line? A. Well, I have been buying stocks of merchandise for the last ten years.

1366 Q. And you went over this stock of Hymowitz's at the request of Kandell or Cohen? A. Yes, sir.

Q. In March of 1937? A. Yes, sir.

Q. And what was your opinion of the sale value of that merchandise? A. Well, I think I offered around eleven or twelve hundred dollars for that stock of merchandise.

Mr. Fielding: That is all.

Mr. Walsh: Are there any more questions?

The Court: They are conferring.

Mr. Walsh: Oh, I am sorry.

1367 Cross examination by Mr. Corbin:

Q. Mr. Abramson, did you ever talk with Mr. Morton Goldman or Mr. Theodore Goldman about the stock at the Army and Navy Store on the Bowery? A. No, I never did.

Q. And after your offer of eleven or twelve hundred dollars for the stock there was some additional talk about an additional $300 to cover relief tickets, was there not? A. I think there was a mention of that.

Mr. Corbin: That is all.

1368 Cross examination by Mr. Mintzer:

Q. Did you have a talk, Mr. Abramson, with anybody, whether it be Mr. Cohen, Kandell, Schulman or Goldman, that you would make one bid on the record and one bid off the record? A. I don't understand that question, sir.

Q. Well, did you have a talk with anybody that you make an official bid of, say, $1200 or $1500, and then actually pay a larger amount of money? A. No.

Mr. Mintzer: That is all.

Mr. Walsh: I would like to inquire further, if your Honor please.

The Court: Yes.

Redirect examination by Mr. Walsh: 1369

Q. Mr. Abramson, do you know Mr. Juskow of the Department of Justice? A. I have met the gentleman, yes.

Q. Of the Federal Bureau of Investigation? A. Yes.

Q. And is that he, who is sitting at the counsel table there (indicating)? A. Yes, sir.

Q. And in November of 1939 did you have a conversation with him? A. I just couldn't tell you when it was but I know he was over to my place of business.

Q. Well, did you have a conversation with him prior to 1939? A. Well, he was only over to my place of business once. 1370

Q. And that is the only time that you ever had a conversation with him? A. The first time?

Q. Approximately how many times did you have a conversation with him? A. Oh, about three times.

Q. Now the first time that you talked with him he asked you what was the amount that you had made for the offer of the goods in the Hymowitz store at 346 Bowery, didn't he? A. At the time he was over at my store?

Q. Yes. A. No. I think he asked me what wholesale inventory there was in that store.

Q. And did you know what wholesale inventory was at that time? A. Well, I told him I should judge there was 1371 approximately between two thousand and twenty-five hundred dollars.

Q. That was the wholesale inventory. A. That's right.

Q. And that was $2000 or $2500 for the goods that were in this store of Paul Hymowitz at 346 Bowery? A. That was wholesale inventory.

Q. And that was after, of course, that you had made an inventory of the goods yourself? A. Well, the figures, sort of, yes.

Q. Yes. How many times were you looking at the goods down at 346 Bowery? A. Only once.

1372 Q. Only once? A. That's right.

Q. And with whom did you go down? A. I happened to be closing a deal of a store at—

Q. I said, with whom did you go down? A. I went down with Mr. Lieberman and another attorney.

Q. Well, who was the other attorney? A. Well, I happened to be closing a deal up on 41st Street, if you want me to come to that.

Q. Yes. I would like his name. A. And I happened to buy a store on Castle Hill Avenue—

Q. Well, can you give us the name of the attorney with whom you went down? I am very anxious of course to
1373 hear some other time about that other deal, but now I am asking you who was the attorney. A. I think his name was Mr. Mormen.

Q. Mormen? A. M-o-r-m-e-n.

Q. And where is he located? A. He was formerly at 41st Street and Madison Avenue.

Q. You were not down there with the defendant Schulman? A. No.

Q. You are positive of that? A. Yes, sir.

Q. Did Mr. Lieberman ever go down and examine the store alone at any time that you know of? A. Not that I know of.

1374 Q. Now do you remember the date, and have you refreshed your recollection as to the day that you went down to the store at 346 Bowery and looked the goods over? A. Well, I think it was around March 31st.

Q. Could it have been April 7th or April 8th, 1937? A. No, I don't think so.

Q. You are sure of that? A. I don't think so.

Q. And you say you were down there only once? A. Yes, sir.

Q. To whom did you tell that you figured that these goods were worth from two thousand to twenty-five hundred dollars?

Mr. Fielding: I object to that question. 1375

Q. (Continuing) If anybody?

Mr. Fielding: The witness did not so state. He said "an inventory value".

The Court: Yes, but he has qualified it now "if anybody". If he did tell, now of course the question is, did he tell anybody that it was worth two thousand or twenty-five hundred dollars.

The Witness: No, sir.

Q. You never told that to anybody, to Mr. Juskow? A. I told Mr. Juskow that the wholesale inventory was around 1376
two thousand to twenty-five hundred dollars.

Q. Now my next question is this: Did you tell anybody else, if you can remember at this time, besides Mr. Juskow, that you had given this stock a wholesale inventory of approximately anywhere from two thousand to twenty-five hundred dollars? A. No, sir.

Q. You kept that a secret?

Mr. Corbin: Well—

Mr. Walsh: I will withdraw it.

Q. Now you testified on cross examination by Mr. Fielding to the effect that you thought that the goods—or that 1377
you made an offer of anywhere from eleven to twelve hundred dollars, is that correct, for the stock? A. Yes.

Q. That is approximately 50 per cent? A. Something around that figure.

Q. To whom did you tell that figure, if anybody? A. Well, I called Mr. Cohen of Cohen & Kandell back.

Q. That is a firm, Cohen & Kandell, is it not? A. That is right.

Mr. Mintzer: I object. There is no evidence at all that there is a firm called Cohen & Kandell.

1378 The Court: Yes.

Mr. Walsh: I withdraw it.

Q. It is known as the Association of Drygoods and Furnishings, is that correct? A. Yes, sir.

Q. And who in the firm did you speak to when you gave the price of eleven to twelve hundred dollars for the stock? A. I am not quite sure who I told it to. I know it was one of the gentlemen.

Q. Well, could it have been Mr. Kandell? A. It could.

Mr. Mintzer: I object to what it could have been.

1379 The Court: Yes; I sustain the objection.

Q. Do you know anybody else down there in the Drygoods Association other than Mr. Cohen and Mr. Kandell? A. No, I don't.

Q. Did you ever have a conversation with Mr. Schulman concerning the price that you would give for the merchandise at 346 Bowery? A. No, I don't think I did.

Q. You don't think you did? A. I don't think I have.

Q. And you deny it at this time? A. Yes, sir.

Q. Now you mentioned something about the relief tickets. Who asked you about the relief tickets when you gave this price of eleven or twelve hundred dollars? A. I think Mr.

1380 Cohen of Cohen & Kandell.

Q. You can't distinguish? A. No, I couldn't.

Q. Well, did you say either Mr. Cohen or Mr. Kandell told you that there were also some relief tickets there? A. I think there was a mention of them.

Q. Were the relief tickets incorporated in the offer of eleven or twelve hundred dollars? A. I don't think they were, no.

Q. That was separate and distinct? A. That's right.

Q. Now you remember—and I show you this paper—

Mr. Walsh: Please mark this for identification. 1381

(Marked Government's Exhibit 22 for identification.)

Q. (Continuing) —and ask you whether or not you recognize that signature at the bottom of the first page? A. Yes, sir, that's my signature.

Q. And do you also recognize the signature on the second page? A. Yes, sir.

Q. And you swore the contents of that were truly before Leonard J. Juskow, an agent? A. Yes, sir.

Q. And also Sidney Rubenstein, is that correct? A. Yes, 1382
sir.

Q. Do you remember on November 29th, 1939, you made a statement—and tell me whether or not the statement as I read it to you was true—

Mr. Corbin: I object to this method.

The Court: Yes. I will sustain the objection.

Mr. Walsh: Well, I offer it in evidence.

Mr. Corbin: I think we ought to have a right to see it.

Mr. Walsh: I have no objection to that, Mr. Corbin (handing).

(Mr. Corbin examines document.) 1383

The Court: Is there any objection?

Mr. Corbin: Yes. We object to it. It does not contradict anything the witness has said.

Mr. Walsh: Well, that is not a proper ground for objection, if your Honor please.

The Court: I just asked him if there was any objection.

Mr. Walsh: Oh, I am sorry. Then I withdraw my commentary.

The Court: Very well. I will read it to see

1384 whether there is any objection to it. (After examination): I will sustain the objection.

Mr. Walsh: If your Honor please, the reason I am offering this in evidence is that I merely request the opportunity to use this to question the witness because I claim surprise. I asked this witness whether knew L. Wein and he said he did, and he described him. We then desisted and we asked him no further questions. However, on cross examination certain matters were gone into by the defendants which are, as I claim, contradictory to the statements contained in this and I mean at this time to

1385 ask him whether or not the statements contained therein are true at that time, and if they are I would like to find that out from this witness, because I contend that the defendants opened the door by their cross examination so that I may go into this new matter.

The Court: I don't think so. I think I will adhere to my ruling. I will sustain the objection.

Q. Did you ever talk on the telephone concerning this matter of Hymowitz with Mr. Schulman? A. Well, I think I did.

1386 Q. And what was that conversation? A. Well, about a year or two years ago I retained Mr. Schulman as my attorney in a few matters.

Q. I am calling your attention, Mr. Abramson, to on or about March, April or May of 1937. Did you ever talk to Mr. Schulman concerning this particular matter, referring of course to the matter of Hymowitz at 346 Bowery? A. 1937 or 1938 you asked me?

Q. No. 1937. A. I don't think I have.

Q. April, May or June? A. I don't think so.

Q. You never spoke to him on the telephone in April of 1937? A. I don't know; I don't think so.

Q. Are you ever called by Mr. Schulman "Mr. A" over the telephone? A. I don't know; I couldn't answer you. 1387

Q. Well, just see if you cannot refresh your recollection by looking back over some of the telephone conversations that you may or may not have had with Mr. Schulman, and tell his Honor and the jury whether or not you were ever called "Mr. A" by Mr. Schulman? A. I can't answer that. I may have.

Q. You may have, but you don't deny that he never did call you "Mr. A"? A. Well, I can't deny it; no.

Q. So it is possible that on occasions he did? A. Yes.

Q. Now did you ever speak with Morton Goldman over the telephone concerning this matter? A. No, sir. 1388

Q. Of Hymowitz. A. No, sir.

Q. How many offers altogether did you make for the goods at 346 Bowery? A. (No answer.)

Q. I will withdraw that question. Let me put it this way: Did you make more than one offer for the goods at 346 Bowery? A. I think I have.

Q. How many offers? A. I just couldn't tell you. I know I made more than one offer.

Q. And to whom did you make the offer? A. To Mr. Cohen or Mr. Kandell.

Q. Either one or the other? A. Either one or the other.

Q. Did you ever make the offer to Mr. Schulman? A. I don't think I have. 1389

Q. Well, will I take from "I don't think I have" that you may have? A. No.

Q. Does that refresh your recollection? A. No, I did not make no offer.

Q. You never did? A. No.

Q. That is a positive denial? A. Yes.

Q. And you are sure of that? A. I am almost positive.

Q. Well, if you will say "positively" I will take your word for it. A. (No answer.)

1390 Q. Did you ever discuss the name of L. Wein with anybody concerning this case? A. Yes.

Q. With whom? A. With the FBI men and Mr. Schachner.

Q. Anybody else? A. Well, I gave Mr. Cohen and Mr. Kandell the name of L. Wein.

Q. In other words, if they accepted your offer they were going to insert into the bill of sale the name of L. Wein? A. That is right.

Q. And you have used that on many occasions, have you? A. I have.

Q. Do you remember the prices of the various offers
1391 for this stock that you made? You say you evaluated it—or I will withdraw that until you answer the first question. A. Well, around eleven, twelve hundred dollars.

Q. Which offer was that, the first offer? A. I think that was the first offer, yes.

Q. Now did you up or down your second offer? A. Well, I think I upped my offer.

Q. How much did you up it by? A. I just can't remember.

Q. Well, would it be $50? A. Well, I don't know. I just can't remember.

Q. I mean, does that refresh your recollection? A. No.
1392 More than that, sir.

Q. How much more? A. I just couldn't remember.

Q. Well, would it be—say, for instance, if the first one was twelve, would the second one be sixteen? Does it go that far, if that refreshes your recollection? A. I just can't remember just what I offered on the second offer.

Q. When you were talking to Mr. Juskow didn't you tell him that on the second offer that you offered either $1800 or $2000? A. When was that, sir?

Q. When you spoke to Mr. Juskow. A. Never did.

Q. Of the Department— A. Never did.

Q. You deny that absolutely? A. Yes, sir. 1393

Q. That you never told him on the second offer you offered them from $1800 to $2000? A. Never did.

Q. We will take one first. Did you ever tell him that you made an offer of $1800? A. No, sir.

Q. Did you ever tell him that you made an offer of $2000? A. No, sir.

Q. Did you ever tell him that you made an offer of $1700? A. I don't think I have; no, sir.

Q. How about $1600? A. I don't think I have.

Q. But you did make a second offer? A. Yes, sir.

Mr. Walsh: That is all. Thank you, Mr. Abram- 1394
son.

Recross examination by Mr. Corbin:

Q. Just one question: That wholesale inventory figure of $2000 or $2500, that meant cost, didn't it? A. That is manufacturer's cost; yes, sir.

Q. That is, cost to Hymowitz? A. Yes, sir.

Q. And you saw from the stuff itself in the store that a lot of it was not seasonable at that time of the year, wasn't it? A. Well, every store has that.

Q. And there was a lot of shop-worn stuff there? A. Well, every store has that. 1395

Q. So that the cost did not, in your opinion, at the time represent the true value?

Mr. Walsh: I object to that, if your Honor pleases. That is argumentative.

The Court: Yes. I will sustain the objection.

Mr. Corbin: All right. That is all.

Mr. Walsh: That is all. Thank you.

(Witness excused.)

1396 HAROLD P. TURNER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Turner, you are a special agent of the Federal Bureau of Investigation, are you not? A. I am.

Q. As such were you present in Room 1508 of 277 Broadway on April 7, 1937? A. I was.

Q. Did you listen by a listening device to a conversation taking place in the next room? A. I did.

Q. Was Mr. Bodinger, a stenographer, there, too? A. Yes, sir.

1397 Q. Was he also listening? A. He was.

Q. And was he taking down the conversation in shorthand or by stenotype machine? A. He was using a stenotype machine.

Q. Now, did he shortly after that listening transcribe his stenotype notations into intelligible writing? A. He did.

Q. And did you look at the transcript shortly thereafter? A. Yes, sir.

Q. About what time was it after the conversation took place? A. I believe he transcribed his notes on the following day and I read them at that time after they had been transcribed.

1398 Q. You read them on the following day, is that your testimony? A. Yes, sir.

Q. And at the time that you read them was the transcript in accordance with what you had heard? A. Substantially so, yes, sir. There were minor variations, yes, as to occasional names. He had a person here speaking—he had the name down wrong, and then I think in one part of it he had 346 Broadway and it should have been 346 Bowery.

Q. But apart from the small variations the transcript corresponded with your own recollection? A. Yes, sir.

Q. You had listened in court while Mr. Bodinger read

his transcript, and that was the transcript which you had seen, isn't that so? A. Yes, sir. 1399

Q. And you were also present on April 14th while Mr. Bodinger was taking down a conversation, were you not? A. I was.

Q. And that is in the same place, 1508, Room 1508 of 277 Broadway? A. Yes, sir.

Q. Did you also read that transcript? A. I did.

Q. And when did you do that? How long after the conversation had taken place? A. I believe that was the following day, too.

Q. And did you find that transcript to be correct also? A. Yes, sir. Well, with minor discrepancies but it was substantially correct. 1400

Mr. Schachner: That is all.

Cross examination by Mr. Corbin:

Q. Are you the fellow who arranged with Hoffman to go there and try to trap Schulman?

Mr. Walsh: I object to the word "trap", if your Honor please. If the defense at this time is going to turn around and claim "entrapment" I wish Mr. Corbin would so state now, if that is the defense. 1401

The Court: Well, I will overrule the objection.

Mr. Walsh: I now object and I ask that the word "trap" be stricken out. I object to the characterization.

The Court: Well, for the second time I am going to overrule that objection.

Mr. Walsh: Then I withdraw the objection.

The Court: It is pretty well developed as to what was done, so I will let him use the word "trap" if he so desires.

You may proceed.

1402 A. I did not make the arrangements.

Q. I mean, listen in on the other side of the wall. A. No, I did not make the arrangements.

Q. Some superior of yours gave you instructions to go in there and listen? A. Yes, sir.

Q. And did you fix the stuff up on the wall and in the wall apparatus through which the conversations were to be recorded? A. No, I did not.

Q. Well, you helped to do that, didn't you? A. I was present.

Q. Well, went in there at night and fixed it up, didn't you? A. Not on this particular occasion.

1403 Q. Which— A. Which occasion are you speaking of?

Q. Well, I am talking about the night of April 6th, the night before April 7th when you started listening. A. There was a set installed on the night of April 6th, yes, sir.

Q. And you got in there without Schulman knowing anything about it, didn't you?

Mr. Walsh: If your Honor please, we object at this time. The preliminary hearing had gone into that, and I now object on the ground that this is immaterial and irrelevant at this time, as your Honor has already decided that point.

1404 Mr. Corbin: I am attacking credibility, if your Honor pleases.

Mr. Walsh: That has nothing to do with his credibility.

The Court: I will overrule the objection. It, at least, is competent, and I will overrule the objection.

Mr. Walsh: If it is on credibility I will withdraw the objection.

Mr. Corbin: When he is overruled he quits.

Mr. Walsh: No, if your Honor please. I think my objection in the first instance was proper.

The Court: Yes. I understand your objection as made.

Mr. Walsh: And if it is made on the ground of credibility I will withdraw it, so that we understand each other. 1405

The Court: I will overrule the objection; it being withdrawn, of course that eliminates it, and it will eliminate any further discussion of it.

Gentlemen, at this time I will say that I have an uptown engagement, so we will take a recess until 2.20. I will be back here at 2.20.

(Recess until 2.20 p. m.)

AFTERNOON SESSION. 1406

HAROLD P. TURNER, resumed the stand.

Cross examination continued by Mr. Corbin:

Q. You went in there the night before the 7th of April, didn't you? A. Yes, sir.

Q. And you went in without Schulman's consent? A. Yes, sir.

Q. And without any effort made to obtain that consent?

Mr. Walsh: I object to that, if your Honor please. That calls for a conclusion. He does not naturally know whether he got consent or not. 1407

The Court: Well, I will let him answer if he made any attempt to obtain consent.

The Witness: I didn't.

Q. You made no efforts and no one else made any efforts insofar as you know? A. Insofar as I know.

Q. Your instructions were to get into that place, without Schulman's knowledge, was it not? A. Permission had been received to enter the office.

Q. From Schulman? A. No, sir.

Q. Or anyone representing him? A. No, sir.

1408 Q. What you did was to go to the superintendent and show your authority and persuaded him to tell the night man to let you in? A. I did not.

Q. Your partner did? A. Somebody from my office did, yes, sir.

Q. It certainly was not from Schulman that you got that consent? A. I think not.

Q. And under those circumstances, as you knew them, that is entry was made without Schulman's consent in the night time; you knew, did you not, when you went in there, and when I say "there" I mean Schulman's private office, you were doing an illegal act?

1409

Mr. Walsh: I object to the form of the question.

The Court: Sustained.

Mr. Corbin: I respectfully except.

So that the record may be clear may I ask a more direct question, because I want to make a point of this?

The Court: Yes.

Q. Did you or did you not know or believe when you entered Schulman's private office that night that you were doing so without right?

1410

Mr. Walsh: I object to the form of that question, if your Honor please, too.

The Court: Yes. Objection sustained.

Mr. Corbin: I respectfully except.

Q. You say that the following day you read Bodinger's notes that he transcribed, that is the day following the day that he took them down? A. I believe it was.

Q. That would be on the 8th? A. I believe it was.

Q. And did you yourself make any notes? A. Well, I believe I did, yes, sir, a few.

Q. When did you make your notes? A. Well, listening to 1411
the conferences.

Q. When you were listening? A. Yes, sir.

Q. In what form were they? A. Just very brief pencil notes.

Q. Did you after making those notes make any other memorandum as to what you heard over the earphones? A. I dictated a memorandum, yes, sir.

Q. When? A. I believe on the day following, on the 8th.

Q. The same day that you read Bodinger's notes? A. Yes, sir.

Q. Before or after you read his notes? A. Before. 1412

Q. Have you those pencil notes and that memorandum that you dictated? A. They are in the files of the Federal Bureau of Investigation.

Q. May I see them?

Mr. Walsh: I am going to object to this.

The Court: Objection sustained.

Let the record show you have not referred to those notes since you have been on the witness stand.

The Witness: No, your Honor.

The Court: Or while on the witness stand?

The Witness: No, sir. 1413

The Court: Objection sustained.

Mr. Corbin: I claim, and I make this statement only for the purpose of raising the point, any memorandum made by a witness at the time should be handed over for our inspection when it relates, as it is shown here to relate, to the conversations that the witness said he heard over the telephone, and which he has described as correctly reflectly in Bodinger's typewritten transcript.

The Court: I will let you make your statement. I will adhere to my ruling.

1414 Mr. Corbin: Thank you.

Q. Did the notes that you made square exactly with what Bodinger wrote on the typewritten transcript?

Mr. Walsh: I object to this as immaterial at this time.

The Court: Objection sustained.

Mr. Corbin: Exception.

The Court: I believe I will overrule that objection and let him answer.

Q. (Read.) A. There were possible variations.

1415 Q. There were variations? A. He heard one thing and I heard another.

Mr. Corbin: I press my previous request and claim as a matter of absolute right to inspect what the witness wrote at the time and which he now says varied from what Bodinger's transcript reflects.

The Court: He stated he heard one thing and Bodinger another. I will adhere to my former ruling but permit you to cross examine the witness orally about what if anything his recollection shows; but his inspection of the memorandum that he made, the witness not having used it to refresh his recollection, I still rule it is incompetent, and an inspection of them should not be granted, but you can cross examine him about it.

1416

Mr. Corbin: My request was not a mere idle curiosity. I requested that inspection for the purpose of using the paper in cross examination and of course ordinarily to determine whether or not it is usable for that purpose.

The Court: Overruled. I deny your request.

Mr. Corbin: And I respectfully except.

Q. Can you tell us without the aid of the memorandum 1417
that you made at the time, what that memorandum contains? Can you recite it for us? A. I had very little of the conversation in.

Mr. Corbin: I move to strike out the answer as not responsive.

The Court: Yes.

Mr. Schachner: I would like to object to this question on the ground what the memorandum contains may be hearsay.

The Court: Well, as long as the question is that he wants to know whether or not he could recite the 1418
contents without reference to the memorandum, I will overrule the objection.

Mr. Schachner: I misunderstood the question, your Honor.

Q. Yes or no? A. Yes, sir.

Q. That is, you have such a photographic memory as you sit there now that you can see those pencil notes you made at the time, three years ago, and recount to us exactly what you then wrote, is that right?

Mr. Walsh: I object to the characterization "photo- 1419
graphic memory".

The Court: Overruled.

Q. Is that right, yes or no? A. No.

Q. So that as a matter of fact it is impossible for you now to tell us exactly what that memorandum contains, the one you made at the time? A. I read the memorandum a few days ago.

Q. Did I ask you that? A. I don't know.

Q. Let me ask you again: It is not possible, is it, as you sit there now, for you to recite to us exactly what that memorandum contains?

1420 Mr. Walsh: I object to the form of the question. He asked him what it contains. After he asks him then he can formulate his own opinion. I object to the form of the question.

The Court: Sustained.

Mr. Corbin: On the ground I am asking for an opinion?

The Court: On the ground that you are asking for possibilities that are too remote.

Q. Well, can you or can you not now recount to us, if you were asked to do so, understand, just what those
1421 pencil notes state with reference to the conversations that you heard over the earphones when Bodinger was taking them down?

Mr. Walsh: First I object to the form of the question; and on the second ground, a proper foundation has not been laid for this particular question. He has not asked him what was the conversation, what did he hear and what did he do.

The Court: I overrule the objection. Counsel on cross examination can always test the witness's memory. I will let it go in as competent.

1422 A. No, I could not relate it word for word.

Q. You do however recall sufficient of its contents in order to state to us that it varied somewhat at least from the typewritten notes transcribed by Mr. Bodinger? A. Yes, sir, slight variations.

Q. I said is that right? A. Yes, sir.

The Court: Do you have that memorandum with you?

The Witness: No, sir.

Mr. Corbin: I ask leave to inspect it.

The Court: Do you have it, Mr. District Attorney?

Mr. Walsh: They are in the files of the Attorney General of the United States, your Honor. 14

Mr. Corbin: That is our Government the same as yours.

The Court: Not in your possession in the courtroom?

Mr. Walsh: No, but if you instruct us to get them I will get them.

The Court: I won't instruct you to get them now, but if you have them here in the courtroom I will examine them to determine whether or not they should be submitted. I don't think that they are competent. I don't think as a matter of right or law that he is entitled to them, but if you do have them here, why unless there were some confidential communications which should not be disclosed I would probably permit him to inspect. 142

Mr. Walsh: There is no basis for his inspection yet. He has not used them on the witness stand.

The Court: That is the theory on which I am making my ruling, not having used them on the witness stand. I will adhere to my ruling, since they are not in the courtroom, and deny your request.

Mr. Corbin: I understand the theory and it is with that I specifically disagree, and that is the ground of my objection. 142

The Court: Yes; I will allow you an exception.

Q. What is the fact, Mr. Turner, were those pencil notes marked for identification in this case? A. No, sir, I believe not.

Q. At a prior hearing? A. I think not.

Q. Produced by you, were they not, and marked here?

Mr. Walsh: I object to this as incompetent, ir-

1426 relevant and immaterial. That question has already been ruled on by your Honor.

The Court: That is true, but I will overrule your objection upon the ground that a witness's memory may be tested.

Mr. Walsh: If he is going on the credibility theory.

The Court: That is the theory.

Q. What is your answer to that? A. No.

Q. You were examined at a preliminary hearing in this matter, were you not? A. Yes, sir.

Q. And you produced some pencil notes on a yellow piece
1427 of paper, didn't you? A. I don't believe I produced them.

Q. Well, they were produced by a superior officer here from the files, into which files you placed them, is that right? A. I believe they were produced by Mr. Walsh or Mr. Schachner.

Mr. Walsh: We are not superior officers.

Mr. Corbin: Well, all right.

Q. Don't you recall his Honor looking at them to see whether or not he would rule one way or another on an objection? A. Probably he did.

1428 Q. And you heard Mr. Walsh's statement just now that they were in the hands of the Attorney General of the United States? The fact is they were here in this courtroom a couple of days ago, to your knowledge? A. Yes, they are now in the files of the Federal Bureau of Investigation.

Q. Well, one of the representatives of that Bureau, in charge of that file, is sitting right here at the counsel table?

Mr. Walsh: I object to that as argumentative. There is no question about them being produced in the courtroom on one occasion. That was in the preliminary hearing, without the presence of the jury.

and in order that your Honor could get all the information at that time. That was the only reason they were produced. 1429

The Court: Objection sustained.

Mr. Corbin: If we get to a point where papers marked for identification in this case are said to be in the hands of the Attorney General, and the assumption seems to be in the statement made by Mr. Walsh that they are not available here, I think I have a right, on the attitude of counsel and on the part of the Court, that they are available, that they must be available for any use that may be properly put to them in this case and on this trial. Now that 1430
does not mean that simply because they were marked for identification here that they are competent, but at least we ought to be able to pass the question of their presence and availability here in this trial. I think under the circumstances—and I submit respectfully—that I shouldn't be left in the air with a statement that they are in the files of the Attorney General. I should have it clear and I should be entitled to have this record clearly mirror the circumstance—

The Court: Some of the papers that I examined 1431
before were what I regarded as confidential communications between the various officers, that threw no light upon this case one way or the other. I don't recall particularly—

Mr. Corbin: That is another point.

The Court: This memorandum that you are talking about now—there were so many produced, but if the District Attorney has them available, I will examine them again, and if there isn't anything that appears in those papers that I thought would be divulged in private communications between investi-

1432 gating officers of the Government, why, I would let you inspect them; not that I think they are really competent. I think the rule of law is well laid down that you are not entitled to an inspection of memoranda unless the testimony shows that the witness has used the memoranda to refresh his memory while on the witness stand, but if you can get those, Mr. Walsh, I would like to see them again.

Mr. Walsh: I have already sent for them, if your Honor please, and when I said they were in the possession of the Attorney General, Mr. Corbin knows as well as I do that they are with the Department of
1433 Justice. They are upstairs in the building, and you saw them before.

Mr. Corbin: That is why I cannot understand. As questions are put—

The Court: Very well. I will send for them. I am going to reserve ruling upon your request until I can see them. So if there is anything further than you can proceed with, with this witness while they are being sent for at this time, go ahead.

Mr. Corbin: Nothing.

The Court: Any further redirect examination on
1434 the matters that have been gone over?

Redirect examination by Mr. Schachner:

Q. You think, Mr. Witness, you would have received permission to hear this conversation had you requested it from Mr. Schulman? A. I believe not.

Mr. Schachner: That is all.

The Court: You may stand aside for the present until I decide whether Mr. Corbin is entitled to these papers.

(Witness temporarily excused.)

Mr. Mintzer: Your Honor, the objection that Mr. 1435
Corbin made and the exception granted will inure to us?

The Court: It will inure to the benefit of all defendants.

SIDNEY S. RUBENSTEIN, called as a witness on behalf of the Government, being duly sworn, testified as follows.

Direct examination by Mr. Schachner:

Q. Mr. Rubenstein, you are a special agent of the Federal Bureau of Investigation, are you not? A. Yes, sir. 1436

Q. As such you were present in listening to certain conversations in Room 1508, that is, you were in Room 1508 listening to conversations in the adjoining room on April 7, 1937, April 14, 1937, April 21, 1937 and April 26, 1937, were you not? A. That's right.

Q. And on all those occasions there was with you one, Nathaniel Bodinger, who took down those conversations with a stenotype machine? A. He did.

Q. Is that right? A. That's right.

Q. And did he always on the following day transcribe these stenotype notes into intelligible transcripts? A. He did. 1437

Q. And did you read those transcripts immediately following those conversations? A. In every case.

Q. And did they in every case correctly state what was said? A. They substantially did.

Mr. Corbin: Objection.

The Court: Yes. I will sustain the objection.

Mr. Schachner: I am sorry, your Honor—

The Court: Well, I sustained it upon the ground that he cannot give his statement on the fact or his opinion as to whether or not they stated what trans-

1438 pired. He can state what he heard, or he can state his best recollection of what he heard, but to state a certain thing is correctly taken down when he did not take it down, I think calls for a statement of fact that is not permissible.

Mr. Schachner: I understand your Honor's ruling now.

Q. Mr. Rubenstein, did you hear the same things that were put down in the transcript?

Mr. Corbin: The same objection.

1339 The Court: I will overrule the objection.

Mr. Corbin: Exception.

A. I did.

Mr. Schachner: That is all.

Cross examination by Mr. Corbin:

Q. How long have you been on the job with the Government? A. Since November 4, 1934.

Q. Where do you hail from? A. Maryland.

Q. And is it part of your job to listen in on other folks' business? A. When business is illegal.

1440 Q. And lots of times when it turns out to be legal you find yourself to be listening in?

Mr. Walsh: I object to it as speculative and argumentative.

The Court: Yes, I will sustain the objection.

Mr. Corbin: All right.

Q. What you do investigate is to see whether or not a crime is being committed, is that right? A. Yes, sir, that is right.

Q. You don't know before you commence investigating by these listening devices whether the words that you are going to hear over the dictaphone will or will not reflect a crime, do you? A. Can't tell till you hear. 144

Q. So you went down there to 277 Broadway on April 7th, was it? A. Yes.

Q. Your first visit? A. Yes, sir.

Q. And found on that first afternoon two listening devices installed? A. No, sir.

Q. You did not? A. No, sir.

Q. Didn't find one with a wire through a hole in the wall, did you? A. There was a microphone in the wall, a little aperture in the wall. 1442

Q. Communicating with a wire? A. Yes, a small one.

Q. A carbon disc? A. Carbon.

Q. What is that? A. Carbon—c-a-r-b-o-n.

Q. Carbon? A. That is right.

Q. You don't like the way I pronounce that? A. You pronounced it incorrectly.

Q. But outside of that, there was that disc in the wall connected with a wire through it, and there was also the crystal disc that was put on the wall with adhesive tape; right? A. That was put on while I was there.

Q. Well, there were the two instruments? A. That is right. 1443

Q. All right. Were you one of the men that went down the night before and got into Schulman's private office? A. No, sir.

Q. You weren't there that time? A. No, sir.

Q. Well, when you heard whatever you did hear through the listening earphones that day, April 7th, did you make memorandum of what you heard? A. Yes, sir.

Q. In writing? A. Yes, sir.

Q. On yellow paper? A. I don't recall the color of the paper now.

1444 Q. Pencil? A. Yes, in pencil.

Q. You wrote those down as the sounds were coming over? A. Yes, sir.

Q. And at the same time Mr. Turner, the last previous witness, was doing the same thing? A. Yes, sir.

Q. Now thereafter you used those notes to dictate a memorandum of what those conversations were, did you not? A. I did.

Q. What? A. Yes, sir, I did.

Q. And that dictation of yours was transcribed? A. Yes, sir.

Q. So that both the penciled notes and the dictated
1445 memorandum that you made at or about the time are extant and in the possession of some of the gentlemen at the counsel table? A. They are in the Bureau files.

Q. All right. Can you recall so that you could tell us here what those memoranda contained, word for word? A. No, sir.

Q. Is it or is it not the fact that they varied from the transcript prepared by Bodinger? A. In some respects they do, yes.

Mr. Corbin: Upon that record, if your Honor please, I make the same request for leave to inspect
1446 the two memoranda prepared by this witness at the time and which, as he says, vary from the Bodinger transcript.

Mr. Walsh: And I on the same grounds as before object, on the ground that this witness has not used any memorandum or any other paper in order to refresh his recollection. As a matter of fact he has not testified that he read Bodinger's transcript over the next day, and thought that substantially agrees with what he heard. The sole purpose that the Government had, in putting these two witnesses on the witness stand, is for the purpose of allowing the

defense to examine them so that they wouldn't say 1447
that we are holding back any evidence. I mean, we are satisfied—

Mr. Corbin: I made no request for their production.

Mr. Fielding: I never made any request.

Mr. Corbin: I am sure Mr. Mintzer never made any request.

The Court: Just a minute, gentlemen. Let me read this over.

Mr. Corbin: And I am sure I didn't hear any of the jurors ask for them.

Mr. Walsh: Well, that is the way the Government 1448
works.

The Court: Very well, gentlemen. Just a minute. Let me read these over and I will rule on the matter. (After examination): You say you object to it?

Mr. Walsh: Yes, your Honor.

The Court: Very well. I will sustain the objection, gentlemen. The court in this circuit has laid down the proposition that unless a witness uses memoranda to refresh his memory while on the witness stand, that opposing counsel is not entitled to the memoranda made at that time unless there is some 1449
reason shown to the court why it should be done. No reason is shown to the court in this particular case why that rule should be varied upon. Nothing has occurred in the trial which indicates to the court that it should be varied upon, and I can very easily see where irrelevant matters and prolongation of the trial would be had without any effective results being obtained from the production, and for that reason I am going to adhere to my ruling and follow the decisions of this circuit, unless something should appear in the trial that would make it show that

450 it was necessary. But nothing of which this court has seen thus far makes the court believe that it is necessary.

Counsel for the defense may cross examine the witnesses, each of them fully, as to their recollection about what occurred or transpired at those hearings, but the rule is that a witness, unless he uses the memoranda, shall not be required to produce it, so I am going to adhere to my ruling.

Mr. Corbin: If your Honor pleases, this memoranda or these memoranda rather—I assume that the ruling applies to all—

451 The Court: Yes.

Mr. Corbin: —were filed in the FBI files and were produced here already for inspection before your Honor. I think the record shows that.

The Court: Yes.

Mr. Corbin: So that my request is not limited to the witness's physical production of them himself at this time. Now, has your Honor in mind—and I will pass it because I don't want to appear to be argumentative, but has your Honor in mind that the record now reveals or shows that these memo-

452 randa made by this witness at the time vary from the notes made by Bodinger?

The Court: Yes. I recall his testimony on that issue. As to there being variances, he heard one thing and the other witness heard another or different parts of the conversations. Now I am going to permit you to cross examine him just as fully as you wish upon what he heard or upon what he didn't hear, but the rule is that when he does not use memoranda to refresh his memory while on the witness stand, that it is not proper for those memoranda to be inspected. So I have reached the conclusion

that the best thing to do is to follow that rule which would be binding upon me. 1453

Mr. Corbin: You see—and this is my last statement, your Honor—

The Court: Go right ahead with your statement.

Mr. Corbin: On direct examination this witness said, over objection and exception, that what he heard squared with what Bodinger's notes revealed.

The Court: I recall what he said, and that is why I am telling you now you may cross examine him on that, but I do not think that makes the memoranda competent.

Mr. Corbin: But to cross examine I want the papers that he wrote down on at the time and that varies with Bodinger's. That is what I have got to be armed with in order to adequately cross examine. 1454

The Court: Very well. I won't argue the matter with you. Don't make your argument to the jury yet, but I am going to rule now that you cannot have the custody or possession or inspection of these memoranda. I will allow you an exception, to each, and now then, you may cross examine this witness, asking him anything you want or recall the other witness and cross examine him in any way you desire. 1455

Mr. Corbin: Well, I am like Napoleon, without a horse. I am just a second lieutenant.

The Court: Very well. Any further cross examination by the defendants?

(No response.)

Redirect examination by Mr. Walsh:

Q. Mr. Witness, do you remember what those slight variations were at this time, in order to keep the record straight? A. In the beginning of the conversation on April 7 Mr. Bodinger had a little difficulty identifying—

1456 Mr. Corbin: This is going to open the door, I suggest. I didn't want to warn counsel because if he goes into it on that score, then I think I have an absolute right—

Mr. Walsh: If he has to refresh his recollection from his notes, yes.

Mr. Corbin: No. If he attempts to give us or he is allowed to give the contents of a written paper then I think I am absolutely entitled to an inspection of that paper.

The Court: I don't understand that he is giving the contents of a written paper. He was asked his
1457 recollection of what was said in that room.

Mr. Corbin: No. He was asked in what respect the paper varied from Bodinger's notes.

Mr. Walsh: Government's Exhibits 18-A, 19-A, 20-A and 21-A.

Mr. Corbin: If your Honor please, let me make myself clear: I don't object to it. I only warn that if that question is persisted in and an answer elicited from the witness, it entitles me absolutely to an inspection of the paper.

The Court: Well, I won't rule on that until I get
1458 to it, but I will say this, of my own notion I will direct the witness that he need not answer as to in what respects it differs, but I will permit the District Attorney or the defense counsel—either one—to ask this witness what he recalls with reference to any conversation about which they want to ask him, but I am not going to permit him to give his opinion as to wherein there were differences and so forth.

Mr. Walsh: I withdraw the question.

Q. You were asked on cross examination by Mr. Corbin whether or not you investigate crimes, and you said you did. A. I do.

Q. Now who instructed you to go over to 277 Broadway, 1459
to Room 1508, and listen in on any conversations that you might hear?

Mr. Mintzer: That is objected to.

The Court: Yes. I will sustain the objection. The question is immaterial. It is what was done.

Q. Had you spoken to Mr. Hoffman prior to the time that you went over to 277 Broadway?

Mr. Mintzer: The same objection.

Mr. Fielding: I object.

The Court: I sustain the objection. 1460

Mr. Walsh: I merely asked him whether he had spoken to him.

The Court: I will sustain the objection as being hearsay.

Mr. Walsh: Will you hear me on that point, if your Honor pleases?

The Court: Yes.

Mr. Walsh: On cross examination Mr. Corbin asked him whether or not he was in the habit of going over there and listening in on conversations. I want to show that at the time that he was instructed to go over there a crime was in the process of being 1461
committed because he knew—

Mr. Corbin: The jury hasn't said that yet, Judge.

The Court: Very well. I will sustain the objection, Mr. District Attorney.

Mr. Walsh: That is all. Thank you very much.

Recross examination by Mr. Corbin:

Q. May I ask you a question: Do you recall on April 7th that Mr. Goldman came in there, or somebody that you thought was Goldman? A. Yes.

1462 Q. On page 16 of this Exhibit 21-A, the Bodinger notes, some time in the proceedings reflected on that page, Bodinger and I agreed that Goldman left the room, although there is nothing specifically there, if you will notice it, which indicates the exact point of his exit (handing to witness).

Do you recall the proceedings reflected on that page? A. Yes, sir, I recall that.

Q. Generally? A. Yes.

Q. Well, after Goldman left did you record anything different, anything in the conversation that occurred between Schulman and Hoffman which differs substantially
1463 from what is reflected in those notes right after Goldman left?

Mr. Walsh: I object to the form of that question. He asked him whether or not he recorded anything different.

The Court: Well, he knows whether he recorded anything different.

Mr. Walsh: Now he is just making another play to get these things by the fact of "recorded."

The Court: I will overrule the objection.

A. I can't say whether they do or not, Mr. Corbin.

1464 Q. After Goldman left and Schulman came back into conference with Hoffman you didn't hear Schulman say anything to Hoffman, in substance or in effect, or in words, that he, Goldman, does not want to talk here, or something of that kind? A. I don't remember it.

Q. Your ears were attuned to the talk in the other room? A. Very intently.

Q. Do you remember Hoffman saying something on the stand like this? A. I don't recall it.

Q. He said when Goldman left and when Schulman came back in, he said to Hoffman, "Goldman does not want to

talk in here," or "afraid to talk"? A. I recall something being said. 1465

Q. You remember Hoffman saying that in this courtroom? You didn't hear anything like that over the phone? A. I don't remember.

Q. There is nothing on there as to that (indicating)? A. If there is anything on there, unless I made some mention of it in my notes, I cannot recall whether I did one way or the other.

Q. So far as that conversation claimed to have occured is concerned, and so far as you are concerned, that is a blank?

Mr. Walsh: I object to that as argumentative. 1466
The Court: Objection overruled.
Mr. Corbin: I guess he understands.

A. There were some things that he could not get. I don't remember him saying it.

Q. You representing our government there, with your earphones keyed to hear what was said and trying to hear at all times what was said, cannot say that Schulman said any such thing to Hoffman? A. I don't remember him saying it.

Recross examination by Mr. Mintzer: 1467

Q. Did you check the statements you recorded with the statements Mr. Turner recorded, the previous statements? A. Checked the statements?

Q. Your statements, how recorded as against the statements recorded by the previous witness. A. I read Turner's statements.

Q. Can you tell the jury if they were checked? A. I would say Turner's and mine were substantially the same.

Q. Would you say that every question and answer or every statement you heard by Schulman and Hoffman were

1468 exactly the same on your statement as they were on Turner's statement? A. Our memorandums that were prepared are not written in the same manner in which the transcript is prepared. We put one word down, and that means a paragraph to us when dictating. I might have one and Turner the other.

Q. When you heard a conversation between Schulman and Hoffman you put down two words? A. Yes, sir.

Q. And then dictated two pages from that? A. Immediately thereafter.

Mr. Mintzer: All right.

1469 By Mr. Corbin:

Q. In this exhibit, Bodinger's transcript, marked Exhibit 21-A, etc. there are some 50 or 51 pages that I counted, and I counted over 350 instances on these 50 pages where there are stars or periods, indicating what Bodinger referred to, as he read them, of something missed or something missing. I don't suppose you can tell us by going through this exhibit how much was missed each time, can you? A. No, sir.

Q. It may have been a few words and it may have been a minute or two of words? A. It would not be a minute or
1470 two. It might be a phrase or several words. In some cases it might have been a sentence or so. I don't remember any instances where a minute or two went by when we didn't get something.

Q. Don't you remember when Goldman came in there and they got disputing as to whether Schulman had lied when he told Judge Coxe what he did, that there was a bitter harangue and a lot of words uttered? A. There certainly was.

Q. And it went over some period of time before anything was recorded? A. Not a period of time. You could hear that they were angry.

Q. They were all talking at once? A. They were all trying to argue and we could not get them all down at the same time. That was the difficulty. 14

Q. What do you say that Goldman said to Hoffman at that time as to whether he lied about Goldman before Judge Coxe? A. I don't remember what Goldman said but he was very angry, according to my recollection.

Q. Do you remember a single word he said independently of your memorandum?

Mr. Walsh: I object to the form of that question, if your Honor please. It calls for a conclusion, "independently of his memorandum." 147

The Court: I overrule the objection.

A. No, sir, I cannot remember anything definitely he said.

Q. That is, you are lost without your memorandum? A. What?

Q. You cannot tell us without your memorandum? A. I would want to make sure of what he said from those transcripts.

Q. The only way you can be sure is by using some paper to refresh your recollection? A. Yes, sir.

Q. Because you have investigated many cases since then? 147 A. Yes, sir.

Q. The only way you can tell us that you heard a conversation three years ago is to refer to notes, what you made at the time; those notes are your best and only guide? A. I would say those transcripts.

Q. The transcripts Bodinger filed? A. They are much more complete.

Q. You knew what you put down at the time, what was said? A. You mean from my pencil notes?

Q. From your pencil notes. A. Yes, sir.

Q. Without those you could not tell us whether or not

1474 you heard parts of that harangue, that are not recorded in Bodinger's notes? A. Yes, sir, I may have put down one word "argument," or something of that sort.

Q. You may have written a lot about it? A. Yes, sir, but I cannot say now.

Q. You cannot tell us that without your original notes? A. You have got the best thing in your hand.

Q. As far as it goes what you wrote at the time we don't know? A. I would say that is better.

Q. You know one thing, and that is that Goldman said to Hoffman, in words or substance, that he lied when he said anything wrong about him before Judge Coxe? A. I don't
1475 remember that.

Q. You didn't hear him say "Why, Hoffman, you are 100 per cent wrong, you are crazy"? A. I don't remember it. He may have said it.

Q. Look at page 5 of this 21-A exhibit, that was right after Goldman came in and the first thing Goldman said, according to that paper, is that he never made a deal with him in his life, wasn't it? A. That is what is in there, and then they started to argue.

Q. And after Hoffman said something, swore, Goldman said "I know damned well it was not the truth, otherwise you sell that stock and prorate that stock for the benefit of
1476 the creditors"? A. Yes, sir.

Q. Doesn't that refresh your recollection that in that period when the transcript here says, at this point, all the parties started arguing, and speaking at once, that while the stenographer could not take it, that you heard Goldman, on plenty of occasions and repeatedly saying to Hoffman, in substance, and in an angry manner that he had never entered into any such deal as he, Hoffman, claimed before Judge Coxe? A. Did he say it repeatedly?

Q. Several times at least. A. I don't remember several

times. When you refresh my recollection with that, if it 147
is in there, I heard it.

Q. But this is good so far and I am asking you in the interim of several minutes, when they were all arguing, and the stenographer could not get it, that you could hear Goldman saying that to Hoffman, in words or substance, not once but several times?

Mr. Walsh: I object to that as assuming a state of facts not in evidence.

The Court: Objection sustained. Counsel has a right to ask him the question whether or not he heard it, but not to assume a few things preliminary to it. 1478
Objection sustained.

Mr. Corbin: Exception.

Q. In that period of time they were arguing for some moments and arguing heatedly, were they not? A. Yes, sir.

Q. During that interval did you hear or not hear Goldman say to Hoffman, in words or substance, "You often lied about me before Judge Coxe, because I never said anything like you claim I said before Judge Coxe, that I said"? A. He may have, but I don't recall it. I won't say that he didn't say it.

Q. Did you hear Goldman at any time while he was in 1479
there say anything at all wrong? A. I cannot say that I did.

Mr. Walsh: Just one question.

By Mr. Walsh:

Q. There was quite a little static on some occasions and you could not hear because of the connections that might be wrong with this crystal set? A. Yes, sir.

Q. And on other occasions the voices were too low? A. Yes, sir.

Q. And on other occasions there were a lot of them talk-

1480 ing at once and you could not get it intelligibly, is that correct? A. Yes, sir.

Mr. Walsh: That is all.

The Court: Stand aside.

(Witness excused.)

Mr. Walsh: May we confer, your Honor, for about two seconds?

The Court: Yes. Do you want to take a few minutes recess?

Mr. Schachner: If you can defer the recess for a while, your Honor, I would like to address a motion

1481 to the Court to the effect that the conspiracy has been proven and therefore all the conversations of the conspirators should be admissible against the other members of the conspiracy.

The Court: Well, I will overrule the motion in that respect. I will rule this, that the conversations or statements made by Goldman, that is Morton Goldman, or Theodore Goldman, or by Schulman, are competent, that one, as against the other, whether made in the presence of the other or not, but as to the defendant Kandell I still reserve my ruling on that.

1482 Mr. Corbin: As to Teddy Goldman, there is not a thing here. There are not any conversations with him.

The Court: I don't want to make any statement in the presence of the jury.

Mr. Corbin: Will you reserve as to him because I think I can convince you. The question is that there is less there than as to Kandell.

The Court: I have followed the questions very closely as to all of them and those statements are competent one as against the other except as to Kandell, and upon Kandell I reserve my ruling at

this time unless the government should produce fur- 1483
ther evidence.

Mr. Walsh: You are going to reserve decision as to Kandell?

The Court: Until the government rests.

Mr. Walsh: The government rests, your Honor. That is the reason for the motion now.

The Court: Let the jury take a recess now.

(Whereupon the jury left the courtroom.)

The Court: I said, Mr. District Attorney, I cannot see where the government has shown a sufficient amount of evidence to go to the jury as to the de- 1484
fendant Kandell. I think I recall well the testimony as to him, because I have tried to follow as to each defendant as the case proceeded, and I do not see where you have ever carried knowledge to him. Of course hearsay statements by alleged co-conspirators could prove the conspiracy entirely, and while that would be sufficient, not having brought any knowledge whatever as to him, so far as I can recall the testimony, I cannot see where you have any case against him.

Mr. Schachner: Will your Honor permit me to argue as to that?

The Court: Yes. I remember he permitted his 1485
brother-in-law to use his name. That is about the only thing I recall that he permitted to be done.

Mr. Schachner: Now, your Honor, the prima facie case against Kandell, apart from the conversations carried on, consist of the following pieces of evidences, which I would like to summarize: The first time the defendant Kandell by independent evidence is proven to have entered the picture of this case is when he, together with the defendant Teddy Goldman, came in, as the government contends, for apparently no

1486 purpose whatsoever, except to try and make himself the co-assignee in this matter. That of itself, in the opinion of the government, shows the acquisitiveness and thought of the defendant. Kandell wanted to make a fee out of that matter. After it became impossible to make a fee, perhaps I should call it in a semi-legitimate manner, because I think that manner of making a fee is not covered by federal law; after that the defendant Kandell enters the picture as one who furnished the premises for the first touch of Mr. Hoffman. It was he, I believe, as the testimony of Mr. Hoffman shows, it was he who was chairman 1487 of the meeting of the creditors during the intermission, and afterwards, according to the testimony adduced by the government, for the first time in our possession, that some amount should be split among the defendants and among Mr. Hoffman—

The Court: Right there, that was never brought home to Kandell anyway, was it?

Mr. Schachner: I believe, your Honor, in the testimony of Mr. Wishbow it was mentioned definitely that while Mr. Wishbow's general recollection as to just what happened was not quite clear, he said expressly that the defendant Kandell was present there.

1488 Now in addition to what I would call his preliminary function in the conspiracy, the government would like your Honor to take into consideration that this conspiracy necessarily required the consent of all creditors, as recited in the indictment.

One of the overt acts of the defendant Kandell consisted in sending out notices and letters urging creditors to accept the proposal, the settlement, that it was necessary for these defendants to put over on the creditors.

Furthermore, I think guilty knowledge as to the

defendant Kandell can be inferred from the fact 1489
that he was one of the persons whom we have seen from the testimony of his own brother-in-law busying himself with furnishing a fictitious name for the purchaser.

Now a fictitious name for the purchaser can have but one purpose. Its purpose was to make it impossible for any creditor to get through to the true purchaser and discover the true purchase price was higher than the one mentioned to the creditors. I think that one piece of evidence alone is possibly sufficiently.

As counsel has just mentioned to me, your Honor, probably in this very entire testimony, that there is 1490
a second bill of sale again in a fictitious name, as Mr. Abramson testified.

The Court: I heard Abramson's testimony as to conversations either with Cohen or Kandell, but that does not mean a thing in the world, unless there is other evidence.

Mr. Schachner: I don't mean to refer to the testimony of Mr. Abramson as incriminating Mr. Kandell directly. I just would like to call your Honor's attention to the importance of the fact that this man went out to get a fictitious name for the purchaser, 1491
because this conspiracy could never be accomplished unless the purchaser was hidden from all the creditors.

Now further to indicate the guilty knowledge of the defendant Kandell, I would like to read to your Honor from one of the Government's exhibits, Exhibit 15, which is properly in evidence and which I believe has been heretofore read to the jury. This exhibit of the government was received by stipulation between counsel.

The Court: I remember it going in.

Mr. Schachner: It consists first of a letter urging

1492 the creditors to accept the settlement that the defendant Kandell readily admits as having sent out, as well as the enclosures, and I would like to read only one of the enclosures which characterizes the conduct of the defendant Kandell. It is dated May 13, 1937.

"Re: Paul Hymowitz, 346 Bowery, New York City, New York.

"Gentlemen:

"Please take notice that the undersigned will purchase from Paul Hymowitz, all of the merchandise con-
1493 sisting of army and navy goods, fixtures, etc., now contained in store at 346 Bowery, New York City, New York, together with any demands, claims, suits and any and all other assets of every kind and nature, subject to any and all liens in or against the same, for the sum of $1500.00 in cash to be paid at the time of closing.

"The closing of the said sale will take place at the office of Goldman, Malter & Goldman, attorneys, 302 Broadway, New York City, New York, on Monday, May 24, 1937, at 9 A. M.

"Very truly yours,

1494 A. Rothlein, purchaser."

Now, your Honor, I submit that the defendant Kandell at that time undertook to send to the creditors a letter allegedly signed by one A. Rothlein, who appears here as purchaser, who has testified here for the record, that he never had the slightest intention of buying the goods, and I submit, your Honor, that of itself is sufficient to connect Kandell with the conspiracy. Surely this man was not on an innocent errand when he sent out the letter—

The Court: I agree with you that probably was not 1495
an innocent errand, but in weighing a case of circumstantial evidence, the government must exclude every reasonable hypothesis than that of guilt.

In sending out the name of a purchaser with a fictitious name, I think that the evidence sufficiently shows that has been done at that time, so too in this case, and other cases, and I might say that is done occasionally to the knowledge of all of us, without any fraudulent intent.

The only thing is that Mr. Kandell attended a meeting, as well as a lot of other creditors, and you could 1496
have indicted them for attending.

The conversation between Goldman and the government witness Hoffman agreed, and the testimony apparently shows that he was not present, nor did he hear at any time any of these conversations.

I have followed the testimony, gentlemen, and I might say to you I always follow the testimony in a criminal case very closely, until sufficient evidence is shown to warrant the belief that a man has committed a crime.

I remember Hoffman testified as to informing Kandell and Teddy Goldman. I cannot exactly say now 1497
what it was, but there was some conversation, which along with the other circumstances are sufficient, in my opinion, to connect or to allow it to go to the jury as to Teddy Goldman; but as to Kandell, while there have been very suspicious circumstances, yet there has not been a thing brought home to him that these people were really conspiring to violate the Bankruptcy Act or enrich themselves fraudulently by use of the Bankruptcy Act. He was, so far as the evidence shows there, but you will have to prove more than that before you can find him guilty of conspiracy. He

498 seems to have had some knowledge of it, so that he at least tacitly entered into the agreement, but I have failed to see, and I followed the testimony closely, there was not one thing that would connect him.

In some ways he could be figured like the stenographers that took the dictation. They possibly may have understood it, yet on the other hand they were simply being used there for a certain purpose. So far there is not sufficient evidence to show that Kandell knew about the sale of the stock of goods at a figure over and above their value and the intention of the parties to divide the proceeds among
499 themselves. There is not a circumstance you can show consistently, certainly to the exclusion of every reasonable hypothesis, to connect him with knowledge of it.

Mr. Walsh: Do you remember the testimony of Theodore Goldman? Mr. Hoffman testified to the effect that on March 24, 1937, Mr. Theodore Goldman called him up on the telephone and then he said subsequently he would come over to see him on the next day. I think the testimony is on page 72 of the record:

"Q. What did they say to you when they came
500 there? A. Well, Mr. Goldman said he thought it would be a good idea if he were retained as attorney and Mr. Kandell as co-assignee."

The Court: That is what Goldman said.

Mr. Walsh: And Mr. Kandell was present, because Mr. Kandell was present with Theodore Goldman when he gave him the two papers which are Government's Exhibits, 1 co-assignee and 2 co-attorney—

The Court: Now on the face of it that does not indicate an illegitimate act.

Mr. Walsh: I understand that, and Mr. Kandell was present when it was said a petition in bank-

ruptcy would not be the best thing for the creditors. 1501
This is all the conversation between Kandell and Theodore Goldman and also Hoffman, and he told me, if the creditors had any idea they were going to file a petition in bankruptcy that would not be the best thing for the creditors.

Subsequently on page 73, he is now relating the conversation:

"As a matter of fact, I asked him (meaning Theodore Goldman) whether he knew some man, some attorney by the name of Robert P. Levis, and he said he did. I told him I would call Mr. Levis up. He is 1502
an outstanding authority on bankruptcy and I would put a call in to Mr. Levis. When I got through talking with Mr. Levis, I told him there was no necessity for having a co-attorney or co-assignee in this estate.

"As a matter of fact, both of them said I ought to think it over and they would see me before the meeting took place at the Dry Goods Association."

In other words, they gave the indication to Mr. Hoffman at that time that they were contemplating filing a petition in bankruptcy and he had better think it over, so far as making them co-assignee and co-attorney. 1503

That is the first time they got into it. There is a divergence of opinion, so far as the testimony is concerned, that Hoffman said it was out in the hall and Mr. Kandell was not present. However, Wishbow testified that Kandell was present when Mr. Morton Goldman said to these other creditors, because Hoffman told them, after he told them 80 per cent or 80 cents on the dollars, what are we going to do with the creditors? And it was then said, Throw them ten dollars apiece. That is the time that Wishbow testi-

1504 fied that he would throw these creditors a ten dollar bill apiece.

Now Hoffman said he was present at that conversation. So far as the sworn testimony of Wishbow was concerned, he was present at the conversation, and I have that, if your Honor please. I will read that portion—.

The Court: What did he state, that he would throw them $10 apiece?

Mr. Walsh: The testimony is to the effect that after the meeting was over and after the conversation was had between Mr. Morton Goldman, Hoffman and
1505 Wishbow out in the hall, then they came back and they subsequently had more meeting with the creditors. Then all the creditors went out and Mr. Wishbow testified to this effect, that there was then Mr. Morton Goldman left, Hoffman, Kandell and himself, and at that time Hoffman asked Morton Goldman, "What are we going to do about these creditors? They are the ones that have heard all about how much assets there are, and what are we going to do with them?" And that is the time when he said, "All right, we will just throw them a $10 bill." Kandell was present at that time.

1506 What I am trying to do, if your Honor please, is to show you that right at the first meeting, when Theodore Goldman called up, the first person whom he brought around—that was to the effect that Mr. Kandell was going to be the co-assignee, and if my memory serves me correctly, his name was written in when he took this note over, which would indicate that he went in with the purpose, and then as soon as he comes in there with this paper—and I will read it to you:

"The undersigned"— 1507

The Court: That is all right; you don't have to read that. They could have gone there—they could go there with legitimacy and argue with them, "If you don't appoint a representative of our creditors as co-assignee, we are going to throw you into bankruptcy."

Mr. Walsh: There is no question of that, and I agree with your Honor 100 per cent, but when they come to the second point, and then they start saying, and they indicate, "If you don't come along with me we will have to file a petition in bankruptcy." That 1508
is the second conversation, when Kandell was over there with Theodore Goldman on the first day when they were there. Now that is the first threat. Up to and including that point I think everything was legitimate and we cannot infer anything from that. I agree with your Honor, but subsequently I find after that, at the meeting the next day, Kandell is in the office and in the room with Morton Goldman.

The Court: I got the impression—if you can lay your hands on that testimony there, that will be a strong circumstance. Kandell heard him say, "What are you going to do with these creditors 1509
here?" And he said, "Oh, we will fix them $10 apiece and they will get out of the picture."

That would be a very strong circumstance but I got the impression from the testimony all the way through that Kandell had not heard anything which would indicate the unlawful agreement.

Mr. Mintzer: If your Honor please, I have page 298—

Mr. Walsh: May I read what I would like?

The Court: Let Mr. Walsh go ahead.

Mr. Mintzer: All right.

1510 Mr. Walsh: If your Honor please, may I read from page 286:

"Q. And what was said? A. Well, at that time it was thought that that method would prove the most satisfactory one to all concerned, and at that time Hoffman said, 'What about the information that I have given on the letter with regard to assets and liabilities? How will that react?' And I think it was at that point something was said— 'Well, the creditors will get $10 apiece, and everybody will be satisfied.'

"Q. Do you remember who said that? A. I think Mr. Goldman—

1511 "The Court: Let me ask you right there—was Mr. Kandell in the room at that time?

"The Witness: Yes, sir, he was.

"Q. And those ten dollars you said was going to be given to the creditors. Who was there—

"Mr. Corbin: I object to that, your Honor.

"The Court: Objection sustained.

"Q. To whom was the $10 going to be given? A. The statement was general that the creditors would get $10.

1512 "Q. By that did you understand that all the creditors of the whole assignment were going to get $10 apiece? A. Well, probably I didn't, probably the creditors who were present."

Now it was in response to your Honor's own question that this witness, Mr. Wishbow, said that Kandell was present in the room at the time they were discussing the $10 that was going to be given to the creditors present at that time.

In furtherance, and with the preliminary statement that I made, plus this fact that he was present, if it be true—and I don't know but at least it is a

question of fact for the jury to decide whether or not he was there, whether or not Hoffman was telling the truth or whether or not Wishbow was telling the truth, at least that is a question of fact for the jury, and then subsequently— 1513

Mr. Mintzer: Judge, may I read on the very question that you asked at the time?

The Court: I will hear Mr. Walsh first and then I will hear you.

Mr. Walsh: May I continue?

The Court: Very well. Let him finish and then I will hear you.

Mr. Walsh: Up to and including that point I will agree with your Honor, and then subsequently at the meeting, when I think at that time that the conspiracy was formed, Kandell knew everything that was going about and what was going to happen, and then subsequently he goes around to Mr. Rothlein and says, "Rothlein, why can't I use your name?" And this bill of sale certainly is one of the essential ingredients of the conspiracy, if the conspiracy is a conspiracy at all. In other words, that is just the climax so far as Kandell is concerned. 1514

The Court: If there is a connecting link to show knowledge on his part, that is sufficient. 1515

Mr. Walsh: Well, I think that has been demonstrated amply.

The Court: Does the record show how far he was or where he was when that conversation was going on?

Mr. Walsh: No. The record shows—

The Court: Well, let me hear from Mr. Mintzer.

Mr. Mintzer: Right on that very point, a question by me—

Mr. Walsh: May I have the page, please?

Mr. Mintzer: Page 298:

1516 "Q. Mr. Wishbow, did you have any conversations with Kandell during the pendency of the Hymowitz case? A. I don't believe I did.

"Q. The Judge asked you before whether Mr. Kandell was present in the room. Do you or do you not mean the room where all the creditors were present? A. Yes, that is right.

"Q. About how many people were there at that time, altogether? A. Well, about half a dozen of us, I should say.

"Q. And this talk whether the creditors could realize $10 on their claims or not took place in that room where
1517 all the people were present? A. Yes, at the very beginning of the meeting."

Now, that is the room where all of the creditors were present. I say to your Honor that in order to show one guilty of conspiracy or of participating in a conspiracy you must show participation or guilty knowledge. Now we had ten witnesses on the stand in this trial and there isn't one witness—

The Court: Yes, gentlemen. I am going to dismiss it as to Kandell and say that I think very probably that he too is guilty, but I don't think you
1518 can prove he is guilty. You indulge in no speculation of guilt, but you can indulge in all the reasonable facts and circumstances. But when circumstantial it must exclude every other reasonable hypothesis. Well, all of the testimony taken as a whole has made the impression upon my mind—and that is the only thing you can go by, is the impression that you have when the matter is finally concluded, that while very likely that this man possibly at least—even probably—that this man Kandell did know about it, it is not easy to conceive how he could have gone through with it without knowing about it, the scheme and

everything. Yet there is a presumption that men do 1519
not commit crimes. That is a presumption of law that holds.

It is very reasonable that this man Kandell, just like a stenographer could have done it, could be used as a figurehead. They tell Kandell, "Go up and buy this. Take this fictitious name, and we are going to make you co-assignee." Well, he is willing to act as co-assignee innocently. He puts this letter out, and the leading lawyers in the transaction are the ones who usually get up the legal things, and the whole scheme here, if there be a scheme, taking the 1520
Government's case as true, is among the three lawyers. And if this man were to be alert and jumping at conclusions one would say, "Well, we will pitch those fellows $10 apiece,"—very easily could have seen something was wrong, but still there is not sufficient evidence for him to know what it was, so that in a conspiracy it must be shown that there is an agreement, either express or implied, or a tacit understanding that they are going to violate some law.

I cannot see, gentlemen, that that has been shown as to Kandell, and unless I could be so shown, unless—and if there were going to be any decision to 1521
let the case go to the jury with regard to Kandell and a verdict found against him, if it were found against him, I will say to you frankly that if a verdict of guilty was returned by the jury against Kandell I just could not let it stand. That is the impression I gained from all this testimony. There is no use taking up your time or mine with an argument on it.

Now with regard to the other three defendants, gentlemen, you may make your motions. I do not care to hear you unless you insist on it. I think the

22 evidence is sufficient, if believed, to convict them. If not believed, then of course they will not be guilty, but you can make your motions if you want to be heard.

Mr. Corbin: I just want to speak of one defendant in particular. I don't want to seem insistent but I think it is my duty—I think your Honor may have a misconception of the evidence.

Do I understand that Mr. Kandell's motion has been granted?

Mr. Walsh: Before you make up your mind and say definitely, if your Honor please, would it be out
23 of order if we were to submit to you evidence from the record which we believe—after all, we have tried and we thought that we did present a prima facie case so far as Kandell is concerned. There may be certain parts of the record—I do not think your Honor's memory is infallible—there may be certain parts that you don't remember, and if it wouldn't be asking too much, and with great respect, we would like to submit to you tomorrow morning a memorandum which would outline, together with the page references, all the testimony that we consider
24 germane and pertinent to the point that we are arguing at the present time. I don't believe Mr. Kandell will lose anything by that because your Honor has indicated your opinion, and unless we show a prima facie case I see nothing he can lose other than having a little more worry over the night what you are going to decide.

Mr. Corbin: I thought that had been decided.

The Court: Very well, gentlemen. Make your motions on the record, each one of you, whatever you want to dictate on the record.

Mr. Mintzer: All right. I move for a dismissal

as against the defendant Kandell on the ground that 1525
there wasn't any evidence established in this case to prove that he was in any way connected with the alleged conspiracy.

The Court: Very well.

Do you want to make a motion, Mr. Fielding, for your defendant?

Mr. Fielding: I move for the defendant Schulman on the same grounds, that it has not been shown by the Government that a conspiracy did exist and that he was not a party to it.

The Court: I will overrule the motion as to 1526
Schulman.

Mr. Fielding: Exception.

Mr. Corbin: I want to move on behalf of the defendant Morton Goldman for a dismissal of the indictment on the ground that the crime alleged has not been proven nor has any—

The Court: I will overrule the motion.

Mr. Corbin: Nor that it could be the subject of prosecution.

The Court: I will overrule the motion on behalf of Morton Goldman.

Mr. Corbin: Now if I knew your Honor's dispo- 1527
sition of the Kandell point, I think I could make a much stronger motion on behalf of Theodore Goldman.

The Court: Well, I have indicated how I feel toward the Kandell motion, but since the District Attorney has insisted, I think properly, I will reserve ruling upon that until the morning and review the testimony. If he has it written out there—I haven't anything special I have to do tonight—very well. Make your motion with respect to Theodore Goldman.

Mr. Corbin: Very well. Now as to that I want to say just a word. The evidence is that he and

1528 Kandell came to Hoffman's office on March 24th or 25th—the 25th, in the morning, yes. And that they had the discussion that was indicated by both counsel here. They left this stipulation for the substitution of the co-attorney and the co-assignee. There was nothing, I submit, in that conversation that did not apply to both of them, and the feeling that your Honor experiences with reference to Mr. Kandell must, I submit, apply equally to Theodore Goldman.

Now the next instance that you had called to your attention with reference to Kahdell was the conversation after the creditors' meeting that same 1529 afternoon, in which it was said that there was some mention of $10 to some of them, and in respect to that conversation, Theodore Goldman was not even present. He did not attend the creditors' meeting, and we hear nothing whatever of Theodore Goldman from the time of March 25th, the morning when he came up there with Kandell on a perfectly proper mission, with a perfectly proper suggestion, namely, that creditors be represented. The situation, which I won't pause to describe, was certainly one which gave creditors—and Goldman's firm represented bona fide creditors—gave creditors the right, gave to 1530 Kandell the right and to Goldman, that they be represented. Nothing came of it and there was no talk about any split-up or anything wrong in that entire conversation of March 25, and as I say, Theodore Goldman wasn't there in the afternoon at all and he does not appear in the picture at all, and he hasn't even been mentioned by any witness from that morning of March 25th down to a day late in May, which is fixed on or about the 27th of May, that is, the next time that Theodore Goldman's name is even mentioned by anybody, and what was it there?

I asked and I got this response—Mr. Hoffman was the only one who mentioned it, and he said this, on page 225: 1531

"Q. And Theodore Goldman wasn't there? A. No, sir"—and then he added: "except that that conversation, the latter part of May, 1937—."

Now that was a conversation that Hoffman hadn't mentioned at all before but he added that to my inquiry of him—this is on cross—and then I said:

"Q. Well, was Schulman present at that? A. Schulman was present." 1532

I said: "When was that?" And he said: "I should judge that was in the latter part of May, 1937. That was at the time that—I think an application had been made by Endicott-Johnson to remove the assignee and that was subsequent to the dismissal of the petition in bankruptcy.

"Q. Well, Teddy Goldman, the younger man, was preparing papers in connection with those proceedings and the settlement that had been arranged, is that right? A. He was to prepare those papers.

"Q. He was the draftsman of those papers? A. Yes, I imagine he was the one to take care of the papers. 1533

"Q. Did this talk about split-up and the four hundred plus something, was that with Schulman in the absence of both Teddy Goldman and Morton Goldman and in the absence also of Kandell? A. That is correct."

So that what Endicott-Johnson did, as the file shows here, they came in fresh, a perfectly independent creditor who was not represented by any of these defendants, an independent attorney, and they made a motion, the effect of which was to have a new assignee associated with Kolman and a new attorney

534 associated with Hoffman, and it was to stop the sale which was then in progress, of the bulk sale. Their attitude was, whereas they take the 40 per cent, that they wouldn't take that in full discharge of their claim, they would still try and would hold Hymowitz for the balance. They finally agreed, as the papers show here, that that matter should be disposed of by their having an auctioneer, whom they named, preside at the sale. That is, the sale would go through by way of assignment proceedings; not the bulk sale. The assignment proceedings would go through if they had this other auctioneer that they named, and
535 it went through that way and they insisted also on Mr. Morton Goldman representing the assignee as a co-attorney in the interests of creditors. They said, "If he is in there with Hoffman, all right." So it was settled that way, but they are a thoroughly independent source, and this young man, Teddy Goldman, prepared the papers to discharge or vacate or dismiss that motion that had been made by Endicott-Johnson, which was arranged—and it it not a feature of this case except as a matter of history of development of the case, hasn't a thing to do with
536 it, has nothing to do with the crime, in any event. This was a crime charged here with having one price, $1900, which was the real figure, and the difference between that and the other figure of $1500 split among the attorneys illegally. Of course the gravamen of the defense is the dismissal of the petition in bankruptcy, else this Court wouldn't have jurisdiction anyway. This same Endicott-Johnson matter is an incidental happening that occurred after the petition was dismissed, and those two things are all that they got in this record which refer to any way to Theodore Goldman. It seems to me on that state-

ment, upon this record, that there can be no possible 153
question, not even half the question that arises with respect to Kandell.

The Court: Well, I cannot agree with you, Mr. Corbin. I think the circumstances are sufficient to carry the case to the jury as to Theodore Goldman.

The situation of the parties is different. The surroundings are different, and the circumstances, if they be proof against one or have probative force against the one, probably wouldn't against the other. Now my conception of the case—and the impression has been made up in the light of all the testimony and of the circumstances and the reasonable inferences therefrom as to Teddy Goldman, is that if you take all the testimony of the Government as true, all the circumstances and all the reasonable inferences therefrom, it is not reasonably probable that he could help but know about what was going on, and that is one of the tests: If there is a probability that a man is innocent, then he is entitled to a judgment of acquittal because of reasonable doubt, but if it is not probable then he is not entitled to a verdict of acquittal. 1538

Now taking all the facts and circumstances, which I must, upon an application as true, I must say that it is reasonably probable that Morton Goldman and Theodore Goldman and Schulman entered into this conspiracy, with the telephone conversations that had been had, with the meetings that had been had with the creditors, with the preparation of the papers and the appearances in court that had been had—I can't believe, taking it as probable—acting as a partner in the firm—I cannot believe it is reasonably probable that he wouldn't have known about the unlawful crime. That does not apply to Kandell because he 1539

1540 was situated differently. It is true that he was at some of the meetings and did some ministerial acts of sending out the letters and so on, and yet there isn't a thing that I have been able thus far to recall that would show with reasonable probability that he did have some connection with it so far as guilty knowledge was concerned.

So I am going to overrule your motion as to Theodore Goldman along with the others, and I will reserve ruling upon the motion of Kandell until tomorrow morning. I will take that record with me and
1541 I will read that record tonight. I will hear you; If I conclude after reading that record that the motion should be sustained I won't require you to go on with the case. I will let you know in the morning. In other words, I will give you a ruling in the morning.

Are you gentlemen ready to proceed with testimony this afternoon?

Mr. Corbin: I think we can.

The Court: Do you want a recess?

Mr. Corbin: Yes.

The Court: Very well. We will take a few min-
1542 utes' recess.

Mr. Walsh: Your Honor, I did not mean that you should lose your evening by reading it. We would be happy to digest those particular parts.

The Court: We get impressions as we go along. I have gotten the impression that he hasn't been connected. Now to take that part there, independent of explanations, there might be sufficient, but I would like the record and I can read it very rapidly.

Mr. Corbin: May I have an exception on the record for my defendants?

The Court: Yes, you may have an exception.

(Short recess.)

NICHOLAS KALMEYER, called as a witness on behalf of 1543
the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Fielding:

Q. Mr. Kalmeyer, where do you live? A. I live at 1763-62nd Street, Brooklyn.

Q. And what is your business? A. I am a general buyer of merchandise.

Q. A general buyer of merchandise? A. Yes.

Q. How long have you been in that business? A. Well, about 25 years.

Q. Have you had occasion over that period to appraise 1544
stocks of merchandise? A. Yes. I do it very often for the jobbers.

Q. And are you familiar with the appraisal of dry goods and articles of that nature? A. Yes. That's been my business.

Q. Were you at any time in 1937 asked to appraise a stock of what is commonly known as an Army & Navy store stock at 346 Bowery, near Bleecker Street? A. I was.

Q. Did you know the name of the proprietor of that store? A. No, I didn't.

Q. At whose request did you go up and make an appraisal? A. A party by the name of Schwartz.

Q. Mr. Schwartz? A. Of the firm of Schwartz & Zucker- 1545
man.

Q. And Schwartz & Zuckerman were a creditor of this man Hymowitz? A. That is right.

Mr. Walsh: Well, he said he did not know the individual who owned the store. I object to the question as leading.

The Court: I will overrule the objection.

Q. Yes or no? A. What is that?

Mr. Fielding: Read the question.

1546 Q. (Read.) A. That's right.

Q. When did you go up to the store? A. Sometime in April, in 1937.

Q. And when you got there was the store open? A. No, the store was closed.

Q. How long did you have to wait before it was opened? A. Well, I waited for about ten minutes till Mr. Schwartz came along and then the two of us waited till the custodian of the store came to open it.

Q. You did not know who this custodian was? A. No.

Q. And did you appraise the merchandise? A. Yes, I did.

1547 Q. What did you do when you appraised it? A. Well, I looked it through in my own way as to the value of the merchandise.

Q. And in your opinion what was the value of that merchandise for sale purposes? A. For me to buy it?

Q. Yes. A. Around $1100.

Q. In other words, you would make an offer of $1100 for the goods as they stood there? A. That's right.

Mr. Fielding: That is all.

Cross examination by Mr. Walsh:

1548 Q. Do you remember the date in April that you went to make an appraisal of this store? A. Well, I wouldn't remember the exact date, anyway.

Q. Did you make any memorandum at that time when you made the appraisal? A. Yes—not as far as the figures are concerned.

Q. You made a notation? A. Well, I put it on a piece of paper.

Q. And you were going to be the buyer, I understand? A. I didn't know I was going to be the buyer. I was called in to appraise it.

Q. Did you know at that time that the Hymowitz estate which was located at 346 Bowery was in bankruptcy?

Mr. Fielding: I object to that. 154

Mr. Walsh: I think that is proper.

The Court: I will overrule the objection.

Mr. Fielding: Exception. That is not stating the facts.

Q. Did you know that? A. (No response.)

Q. Well, were you there after April the 3rd, 1937? A. I was only once.

Q. Well, I mean was it the beginning of April or the end of April? A. I really couldn't say.

Q. That is quite some time ago. A. I wouldn't remember. 155

Q. Did you know whether or not that estate was in bankruptcy at the time you made that appraisal? A. Well, I wasn't interested in the condition of the sale. I wasn't interested at all. I am called in at different times by creditors to appraise stocks for them.

Q. I ask you again whether or not you knew that the estate of Paul Hymowitz was then in bankruptcy and under the jurisdiction of the Federal Court? A. Why—

Q. Did you know that? A. I am totally—as a matter of fact, I don't know.

Q. Well, do you know whether or not you could have purchased that stock other than from a sale conducted by the trustee in bankruptcy? A. Well— 155

Q. Do you know that? A. I don't know anything. All I do know—

Q. Well, I won't dispute that, but I want to know whether or not you know you can buy a stock or the proceeds of a business—A. Well, that isn't—

Q. —other than from the trustee in bankruptcy? A. That isn't why I am called.

Q. Do you know that, sir? A. No, that is not my end of the business at all. I am not interested in that.

Q. Now when you say that you were going to offer

1552 $1100 for the merchandise as it stood in the store in April—A. That is right.

Q. What was the approximate cost of the merchandise that you looked at at that time? A. Well, I will tell you, I haven't put down exact figures what the value of the merchandise was.

Q. Have you got those figures, incidentally? A. No.

Q. You destroyed that paper? A. Well, it is so many years—it is two years back.

Q. Did you give the figures to Mr. Schwartz? A. Yes, I told it to him personally.

Q. You told Mr. Schwartz in person what? A. That
1553 my offer for the stock would be $1100.

Q. Well, Mr. Schwartz, was he going to sell it to you? A. No, but they put it—they put it to the creditors' committee and decided what to do with it. That is the way it is generally conducted.

Q. I see. Were you in the courtroom when Mr. Abramson was on the stand? A. Partly; not all.

Q. Did you hear him testify that he valuated the cost of the merchandise in that store anywhere from 2000 to $2500? Did you hear that? A. Well, that is a matter of opinion.

Q. Were you here then when he said that? A. No, I
1554 didn't hear him say that.

Q. And he also testified that he offered the first time about $1100. Did you hear him say that? A. I will—

Q. Well, what was your value that you put on the cost of the merchandise? A. If he put—

Mr. Fielding: I object to the question unless he did put a value on the cost of the merchandise.

The Court: Yes. I will sustain the objection, unless he did.

Q. Well, did you evaluate how much the cost was before

you made your offer of $1100, how much you would pay for it? A. What it was to be liquidated for? 1555

Q. What was the cost value? A. We are not interested in that at all.

Q. But that is how much you would give for it? A. How much it could be liquidated for.

Q. You did not know to whom this stock belonged, did you? A. I just made the offer to Schwartz, that's all.

Q. That was the first offer that you made for the merchandise, approximately $1100? A. Yes.

Q. Is that correct? A. That's right.

Q. And is it usual to make a very low offer on the very first offer and then up it, as the case may be, to get the stock? A. No, not necessarily. 1556

Q. In other words, you offer the highest price the first time? A. That's worth to me.

Q. And you never upped your offer at any time? A. No. I wouldn't have any occasion.

Q. Did you ever up an offer after you made the first price? A. In usual cases, I don't.

Mr. Walsh: That is all.

(Witness excused.)

1557

SAMUEL LIEBERMAN, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Fielding:

Q. Mr. Lieberman, where do you live? A. 521 East 28th Street, Paterson, New Jersey.

Q. And what is your occupation? A. Cash buyer.

Q. Of what? A. Of general merchandise.

Q. And does that include the stock which is generally kept in what we call an Army & Navy store? A. Yes, sir.

Q. And how long have you been in that business? A. About 25 years.

1558 Q. And did you at any time—and if so, when—make any inspection and appraisal of the Army & Navy store known here now as the Hymowitz store on the Bowery? A. Yes, sir, I did.

Q. And when did you make that appraisal? A. That was some time in March.

Q. Did you go to the store? A. I did.

Q. Was it open at the time when you arrived at the store? A. There was some gentleman standing outside waiting for us at that time.

Q. And when you say "us" whom do you mean? A. Mr. Abramson and myself.

1559 Q. Was Mr. Schulman there with you at that time? A. No, sir.

Q. You went into the store? A. Yes.

Q. How much of an inspection did you make of the goods? A. Well, I—at that time I think it was worth—

Q. No. What did you physically do when you went into the store? Did you make a careful appraisal or just ran your eye over it? A. Oh, no. We took an inventory there.

Q. You took an inventory? A. Yes.

Q. And at the conclusion of that inventory what was your opinion that you would pay for the stock if you bought it? A. Well, for the merchandise alone it would

1560 run around $1200.

Q. Did you make such an offer for the merchandise? A. Well, you see, Mr. Abramson—

Q. Did you make such an offer, you or Mr. Abramson? A. Mr. Abramson made the offer.

Q. Later on did you make another offer? A. Yes, sir. There were two offers made there.

Q. What was the second offer? A. There was an offer made for $1500.

Q. And what did that include? A. That includes for the—there was some tickets there, food tickets or something—

Q. Which you understood to be worth about how much? 1561
A. About $300.

Q. So that your second offer of $1500, so far as the value of the inventory was concerned, was exactly the same as the first offer you made? A. That is right.

Q. The difference being represented by those food tickets? A. That is right.

Mr. Fielding: Your witness.

Cross examination by Mr. Walsh:

Q. Do you remember the date when you went down there, sir? A. It was sometimes in March. 1562

Q. The latter part of March? A. I wouldn't remember; I couldn't tell you that.

Q. With whom did you go? A. With Mr. Abramson.

Q. You are his partner, aren't you? A. I was associated with him.

Q. At that time? A. That is right.

Q. Did you hear his testimony in court? A. I heard part of it, yes.

Q. None of those offers was ever accepted, was it? A. Not that I know of, no.

Q. Do you know a man by the name of Wein? A. Yes, I do. 1563

Q. Do you know Mr. Schulman, by the way? A. I know him, yes.

Q. How long have you known him? A. I know him for a few years.

Q. Well, how long is a few years? A. Probably about two years—two or three years.

Q. That is 1938? A. No. That would be around—I know him since about 1936.

Q. About 1936? A. Yes, sir.

Q. Have you ever done any business for him? A. No.

1564 Q. Did you ever go down to this store at 346 Bowery with him? A. Not with Mr. Schulman, no.

Q. Whom did you go down there with? A. We went down—I went down with Mr. Abramson and another attorney.

Q. And how many times did you go down to that store? A. Just once.

Q. Now is it true that both you and Mr. Abramson went down and made a general inventory the first time? A. That's right.

Q. Did you hear Mr. Abramson testify to the effect that it was worth anywhere from 2000 to $2500, the stock?

1565 Mr. Fielding: I object to the question as not proper in form.

The Court: I sustain the objection.

Q. Well, what was the inventory price that both you and Mr. Abramson, your partner, agreed on at that time? A. What to pay for the store?

Q. What the inventory price was, or the merchandise in the store. A. Well, I would know the inventory, the wholesale inventory, if that is what you mean.

Q. What was the cost value of the merchandise, of that 1566 stock? A. I wouldn't know that. I know I wouldn't know the cost value.

Q. You wouldn't know that? A. No.

Q. And yet you are a partner of Mr. Abramson? A. That's right.

Q. Do you know what a line means? A. Yes, sir.

Q. What does it mean? A. That means double the amount. For instance, if you say $100, you say "line 2", means $200.

Q. What do you mean by "a five line"? A. A five line means $2500.

Q. $2500? A. That's a five line.

Q. And didn't you tell Mr. Schulman down at that place that that was the five line? A. I never spoke to Mr. Schulman.

Q. Down there at the— A. No.

Q. Do you know Mr. Kolman? A. No.

Q. He was the assignee of Paul Hymowitz. A. There was one young man that I seen there. I wouldn't know his name.

Q. Why wasn't your offer accepted, do you know? A. No, I really don't know.

Q. When did you learn about the $300 that was supposed to be included in the sale of that store? A. I don't know when we learned about it, but I knew we talked it over.

Q. With whom? A. With Mr. Abramson.

Q. In other words, the two of you— A. We always combined what we should offer for a store. We always put our figures together.

Q. But where did you hear about the $300? A. Right in our office on Grand Street.

Q. Who told you? A. Mr. Abramson.

Q. Who told him, do you know? A. I don't know.

Q. Do you know when you first heard about the $300 tickets that were going to put in? A. No, I don't remember.

Q. You don't remember when you heard that at all? A. No, I wouldn't remember.

Q. Well, would that be right around March? A. It must have been around the same time.

Q. Well, it was closely connected with that? A. It must have been closely connected with that.

Q. Do you know a man by the name of Rothlein? A. Rothlein?

Q. Yes. A. I don't know.

Q. You don't know him? A. No.

Q. Well, did you make an offer for that merchandise? A. I didn't. Mr. Abramson made it.

1570 Q. He was your partner? A. That is right.

Q. You were present when he made the offer? A. No, I wasn't present when he made the offer.

Q. To whom did he make the offer? A. I don't know to whom he made it, but I know he made the offer.

Q. Did he make it to Schwartz, too? A. I don't think so.

Q. To whom did he make it, do you know? A. I don't know. I think it was in Kandell's—Cohen and Kandell's office.

Q. He made the offer? A. Up in their office.

Q. To whom? A. I that I don't know.

Q. How long have you known Kandell? A. Oh, quite a
1571 few years.

Q. Well, about how long? A. Maybe since 1935, 1936.

Q. Did you ever do business with him? A. Yes, I had business with Mr. Kandell.

Q. Which came first, the offer of 12 or the offer of 15? A. That I couldn't remember.

Q. You wouldn't know that? A. I wouldn't remember that.

Q. Well, do you remember with whom you may have had your conversation as to what you would pay for the merchandise? Did you have it with Mr. Cohen? A. I had no
1572 conversation, with none of them.

Q. But you do know Mr. Kandell? A. I do know him.

Q. Who had the conversation with the person who was supposed to purchase this merchandise? A. Mr. Abramson.

Q. And he had all this conversation up at Cohen and Kandell? A. I don't know where he had it, but I know he was the one who was doing the talking.

Q. Do you know a man by the name of Mr. Rothlein? A. No.

Q. You don't? A. No.

Q. Do you know what name was going to be put in the bill of sale of the offer you made? A. No, I don't.

Q. Was it L. Wein? A. I didn't know it. 1573

Q. What? A. I didn't know it.

Q. Did you ever use the name of L. Wein when you would purchase goods? A. Yes, we did.

Mr. Walsh: That is all. Thank you very much.

Mr. Fielding: Your Honor, at this time there are one—perhaps two—witnesses whose examination would be short, but they are not here, not knowing that the case would be terminated at this time. I will put Mr. Schulman on the stand next, but that will be a very protracted direct and cross examination, and I ask leave that that go over to tomorrow. 1574

Mr. Walsh: Well, I have no objection if he starts today, if your Honor please. I don't know how long he wants to continue.

The Court: Well, I was going to run till about five o'clock or five minutes after. If you could get through all the preliminaries, all right; but if you would rather wait until tomorrow—

Mr. Fielding: It would suit me better to have it wait until tomorrow morning, to have it continuous.

The Court: Very well. Do you have anybody else that you can use at this time?

Mr. Fielding: Yes. Mr. Stringer—I didn't know this gentleman was in the room. 1575

(Witness excused.)

ABRAHAM STRINGER, called as a witness on behalf of the defendants, being duly sworn testified as follows:

Direct examination by Mr. Fielding:

Q. Where do you live? A. 2305 East 22 Street, Brooklyn.

Q. And what is your occupation? A. Auctioneer and jobber.

1576 Q. And what were you doing in 1937, in April of that year? A. What I was doing?.

Q. What were you doing in April of 1937? What was your occupation then? A. The same business.

Q. In the same business. Did you receive a request from any of these defendants at that time to inspect merchandise in the store, an Army & Navy store on the Bowery? A. Yes.

Q. And who requested you to go to that store? A. A creditor by the name of Zuckerman on Orchard Street, New York.

Q. He is a partner of Mr. Schwartz, isn't he? A. Yes.

1577 Q. Did you go to the store? A. Yes. I went with Mr. Zuckerman.

Q. When? A. On April—whatever date it was—1937.

Q. And Mr. Zuckerman was a creditor of this Hymowitz? A. That is what he told me.

Q. And did you appraise the merchandise? A. Well, I was there with my associate.

Q. Who is he? A. Mr. Michaels—Jack Michaels.

Q. What is his business? A. Same business; Auctioneer and appraiser.

Q. And how long has he been in that business? A. About 30 years.

1578 Mr. Walsh: I object to that, if your Honor please, unless he was with him all the time.

The Court: Well, I will overrule the objection.

Mr. Fielding: We expect Mr. Michaels here tomorrow, so it makes no difference.

The Court: All right.

Q. Was an appraisal then and there made for the merchandise? A. Yes.

Q. And what was the figure that you put on it? A. I believe it was $1050—$1050.

Q. $1050? A. That's right. 1579

Q. And you inspected the merchandise, did you not? A. Yes.

Q. How long were you in there? A. Oh, I should say about 20 minutes.

Q. Did you report to any person the value of the merchandise as you considered it, other than Mr. Zuckerman who was with you? A. No, sir.

Q. That ended your connection with the matter? A. Yes, sir.

Mr. Fielding: Your witness.

Cross examination by Mr. Walsh: 1580

Q. How old are you, sir? A. 30 years.

Q. And how old were you in 1937? A. 27.

Q. And how long had you been an auctioneer in 1937? A. In 1937? Well, I am eight years now an auctioneer, so about five years then.

Q. And do you still work for Mr. Michaels? A. I don't work—I am connected with him; partner.

Q. Well, is he also an auctioneer? A. Yes.

Q. And were both of you down there making an appraisal? A. That's right.

Q. On that occasion? A. Yes. 1581

Q. You say a man by the name of Mr. Zuckerman—A. Yes.

Q. —came down and asked you to make an appraisal? A. Yes.

Q. With whom was Mr. Zuckerman associated? A. I don't know his partner's name. I have dealt with him before.

Q. Is it Schwartz? A. I believe it was.

Q. Schwartz & Zuckerman? A. I believe it is Schwartz & Zuckerman on Orchard Street. I know—

Q. And approximately—pardon me. Did you have some-

1582 thing more to say? A. I know he has a place on Orchard Street and he called me on the phone and told me to meet him there and go down with him.

Q. And did you go there with him? A. Yes.

Q. How long have you known Mr. Schulman? A. Mr. Schulman? Oh, maybe five or six years.

Q. Did you know him prior to 1937? A. Oh yes.

Q. Approximately when did you go down to the store? A. I know it was in April, 1937.

Q. In April of 1937? A. I am not sure of the exact day.

Q. And when you were there you made an appraisal of that store in 20 minutes, is that correct? A. That is

1583 correct.

Q. What was that appraisal of $1050? Was that what you would offer to purchase the goods for? A. Yes.

Q. Did you evalute what was the price of the merchandise in the store at that time?

Mr. Fielding: You mean the cost price?

Mr. Walsh: The cost price, yes.

A. No.

Q. That is what you would get on, shall we term, a "knockdown-drag-out sale"? A. No, that's what I would

1584 pay for it.

Q. If you were buying it? A. That is right.

Q. And then you in turn would sell it again? A. Would resell it again.

Q. What is usually your profit after you purchase your goods? A. Oh, about 15 percent.

Q. 15 per cent? A. Yes, besides the expense.

Q. Well, what expenses do you have? A. Well, expenses are usually $100.

Q. So you make 150 to $200 on a thousand dollar lot? A. Yes.

Q. Is that right? A. 200, 250.

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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 962

MARTIN M. GOLDMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 963

JACOB P. SHULMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 980

THEODORE GOLDMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED APRIL 18, 1941.
APRIL 18, 1941.
APRIL 23, 1941.

CERTIORARI GRANTED OCTOBER 20, 1941.

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Q. Incidentally, did you make a memorandum of the time that you were down to the store? A. The time we were down there we took inventory. 1585

Q. What kind of an inventory did you make? A. Well, I mean just going through the boxes, guessing more or less.

Q. And did you jot these guesses down? A. Yes, sir.

Q. And did you charge Mr. Zuckerman for anything? A. No.

Q. You didn't? A. No.

Q. Do you know a man by the name of Nicholas Kalmeyer? A. Nick Kalmeyer?

Q. Yes. Do you know him? A. Yes.

Q. You know he was down making an appraisal for Zuckerman's partner, Mr. Schwartz, about the same time you went there? A. I just heard of it. 1586

Q. You never heard that before, did you? A. No, sir.

Mr. Walsh: That is all.

Mr. Fielding: That is all.

(Witness excused.)

The Court: Is that all you have?

Mr. Fielding: That is all.

The Court: Very well. I wonder if we can convene tomorrow morning at 10 o'clock? 1587

Mr. Fielding: As far as I am concerned, that is all right.

The Court: I hate to ask you to do that, ladies and gentlemen, but as I have made these appointments, and while I will take all the time to try a lawsuit to be required—I am not trying to rush anybody through anything, but I do want to conserve as much time by meeting earlier and running a little later, if we can.

Thank you very much. You will be excused until tomorrow morning at 10 o'clock.

(Adjourned to July 23, 1940, at 10:00 A. M.)

UNITED STATES OF AMERICA

vs.

MORTON GOLDMAN, et al.

New York, July 23, 1940;
10:00 A. M.

TRIAL RESUMED.

(The following proceedings were had without the presence of the jury:)

The Court: Very well, gentlemen. I have read this entire record and I have reached the same conclusion that I announced yesterday, and that is that there is not sufficient evidence to let it go to the jury as to the defendant Kandell. I have read also the brief left with me by the Government this morning and the excerpts from the authorities quoted therein, and I state that I already had that idea with reference to what the law is. When a conspiracy is once established it takes just slight evidence to connect any other defendant with it but the law is well established that before any statements of the conspiracy are admissible there must be some evidence of the guilty knowledge. Every act that has been done by the defendant Kandell is just as consistent with innocence as it is with guilt, when you eliminate the hearsay statements or, rather, the ex parte statements insofar as he is concerned of the co-defendents.

You might say that possibly the evidence is sufficient to say that he is really guilty. You might say that the circumstances raise a very strong suspicion that he must have had some guilty knowledge of it but of course it is very settled that you can't convict a man upon conjecture and suspicion, and there must be some positive evidence or some circumstances in-

dicating possibly his connection with it. I read the entire record there with reference to what happened at the meeting when the $10 was discussed. That testimony is very vague as to what actually happened. The witness Hoffman testified that after the meeting, that he and Goldman and some other one remained there, did not bring in Kandell. Then it was that the Court asked if Kandell was at that meeting and he said "Yes." Then further on—either further on or prior thereto, I don't recall which—he had testified that the only discussion about the $10 was had at that general creditors' meeting when they first assembled there, and that is the strongest circumstance connecting Kandell with it. It may be if they are guilty that Kandell is as guilty as any of them, but the evidence, in my opinion, is not sufficient to sustain a verdict against him, and if he were to rest now and if I were representing him, that is what I would do, if the motion should be availed of, but as the Court I have no thought or right to gamble or require the defendant to gamble when the Court was not in doubt about it. 1591 1592

Frequently I reserve ruling upon a motion like this until the conclusion of the testimony because my mind is not definite, and when it is not definite in this case, why, when I think I should reserve ruling, but when my mind is definite, that there isn't sufficient evidence here connecting him, then I follow the rulings and make the decisions on them. 1593

So as to Kandell, I will sustain the motion as to him, I will adhere to my ruling and discharge him. I will let it go to the jury on the others.

Let the jury come in.

(The jury entered the courtroom.)

The Court: Very well. Ladies and gentlemen, I

1594 might say that I have sustained a motion to exclude the evidence as to Kandell and discharge him. He is no longer in the case.

JACK MICHAELS, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Fielding:

Q. Mr. Michaels, where do you live? A. 2477 East 21st Street, Brooklyn.

Q. And what is your business? A. Cash buyer.

1595 Q. Of what? A. General merchandise.

Q. That includes? A. General dry goods.

Q. Furnishings and dry goods? And things of that type? A. Yes.

Q. What were you doing in 1937? A. In the same line of business.

Q. How long were you engaged in that business? A. In this business since 1917.

Q. Did you in April of 1937 visit what is known as the Army & Navy store at 346, I think it is, Bowery? A. Right; yes, sir.

Q. At whose request did you make that visit? A. I

1596 went through the stock—

Q. At whose request did you go there? A. At whose request? I was asked by a fellow by the name of Kreiselman from Orchard Street—a jobber of Orchard Street, New York City.

Q. And as a result of that request you went there? A. Yes, sir.

Q. Did you appraise the merchandise? A. I just looked it through, according to my knowledge.

Q. What were you prepared to bid for it? A. From 1000 to $1050.

Q. Not any higher? A. No, sir.

Q. Were you asked if you wouldn't raise your bid over 1597
that $1000? A. Subject if I could get the store for ten days to dispose of it on the premises, it would be worth another $50 instead of the removing expenses but I was not asked for it.

Mr. Fielding: Your witness.

Cross examination by Mr. Walsh:

Q. How long did you say you were in the cash buying business? A. 1918—1917.

Q. Did you go down with anybody on that day when you examined the goods? A. I was with my partner, 1598
Mr. Stringer.

Q. Mr. Stringer? A. Abraham Stringer.

Q. He testified yesterday. A. Yes.

Q. Do you remember—was he working in conjunction with you? A. Mr. Stringer?

Q. Yes. A. Well, we are partners.

Q. Well, I understand that, but did he go down with you just to assist you? A. He went down with me just to assist me, yes.

Q. And will you tell the Court and jury what type of an inventory you made and how long it took you? A. 1599
It took me about 20 minutes.

Q. 20 minutes? A. That is all.

Q. How big is that store? A. That store is—say, about 15 foot front, if I am not mistaken—15 or 18; a small store, a small size of a store.

Q. And you went down, you said, at the request of Mr. Kreiselman? A. Mr. Kreiselman.

Q. Kreiselman. A. Kreiselman and Schulman. I was recommended by Schulman to Kreiselman, he should call me to look through the stock and get a bid on it.

Q. Wait till I get that straight. You said that Mr. Schulman called you up first? A. Mr. Schulman called

1600 up Kreiselman to call me to go through the stock and put a bid on it.

Q. How do you know that? A. Mr. Kreiselman called me up and asked me to come down and put a bid by the request of Mr. Schulman on it.

Q. And how long have you known Mr. Schulman? A. Schulman? About seven or eight years I guess.

Q. Have you ever done business with him or for him before? A. I don't—maybe once or twice through the creditors.

Q. Through creditors, you say? A. Yes.

Q. In insolvency proceedings? A. No, on bulk sales.

1601 Q. In bulk sales? A. Right.

Q. Did you make an inventory or did you appraise the goods for the purpose of a bulk sale? A. Well, I appraised the goods, to put a bid in, but whatever they will do, bulk sale or assignment or anything, that was a further question, but it didn't go that far.

Q. And how many appraisals do you make a year, sir? A. Well, mostly we buy our own stock—once about ten or twelve appraisals—not appraisals for lawyers, but we are doing the appraisals for our ownself, to try and buy the stocks through the lawyers under the Bulk Sales Act.

1602 Q. Do you remember the date when you went down to the place on the Bowery—what was the address, did you say? A. Bowery, corner Spring. I couldn't give you exactly the number.

Q. Who owned the store, do you remember? A. A fellow that went to jail on account of a certain—

Q. What was his name? A. I couldn't tell you.

Q. Don't remember that? A. No.

Q. That was three and a half years ago? A. It was around sometimes in the spring of 1937.

Q. Was that after April? A. It was either the early part of April or late in March.

Q. Did you know that particular store had gone into bankruptcy at that time? A. I did not. 1603

Q. Well, do you know that the only person that can buy when an estate is in bankruptcy or who can sell it, is the Underwriters' Salvage Corporation? A. I do.

Q. You know that? A. I do.

Q. Did you know that this store was in bankruptcy, or this particular business was in bankruptcy at that particular time? A. I did not.

Q. Well, if you had known that, your visit there would have been foolish? A. No, it would be just the same because many of the stores are sold in the court before the referee before being given to the underwriter. 1604

Q. As a matter of fact, Mr. Michaels, how do you remember the amount? A. It just happened this was a case that I remembered the amount for a reason.

Q. What was the reason? A. We were trying to buy the store for a retail, being that it had a black mark on it on account of the fellow going to jail, so we were interested only for forced liquidation.

Q. That's the way you remember this particular thing? A. Right.

Q. Did you make any notations? A. No notations at all.

Q. You just carried that price in your head for three and a half years? A. Not carrying only, but we know exactly—we go through a stock, if we get it or we don't get it, if we come to a place we want to know—know what the stock is worth. 1605

Q. Did you speak to Mr. Schulman before you testified? A. When?

Q. At any time. A. Well, Mr. Schulman was over a couple of months ago, that I gave him a statement of it.

Q. Did you give him a statement? A. Yes.

Q. Have you got a copy of that statement here? A. I haven't got it with me.

1606 Q. What did you say in that statement? A. Whatever I put a bid on it and whatever it was there.

Q. And was it at that time that you recalled that the price was $1050—A. Right.

Q. —when Mr. Schulman spoke to you? A. Right.

Q. You weren't in the courtroom yesterday when Mr. Stringer was here, were you? A. No, sir.

Q. But you are absolutely definite and sure, are you; that it was Mr. Kreiselman that sent you and Stringer down there? A. Mr. Kreiselman called me and I took Mr. Stringer with me and we went down to look at it.

Q. It wasn't Schwartz, you are absolutely positive? A. 1607 Absolutely positive.

Q. It wasn't Schwartz that sent you and Stringer down there? A. No.

Q. You are positive of that? A. Positive not.

Q. And you are positive that it wasn't Zuckerman? A. Positive not.

Q. Do you know how much Kreiselman had as his claim against this estate at that time? A. I didn't ask him because we are not interested in this here method. We are only interested when we are called upon to make the bids.

Q. Did you know anything about—that was $1050, was 1608 solely for the stock in that store at that time? A. Yes, right.

Q. Was it in pretty good condition? A. The stock was in pretty good condition.

Q. There wasn't any stock there that was 20 or 10 years old, was there? A. We didn't look into that—

Q. Well, it was in fairly decent shape, was it? A. The stock was in fairly decent shape because it was work clothes on the shelves.

Q. As a matter of fact, in April if you had disposed of that stock you could have disposed of it immediately

because there was a lot of summer stuff there? A. It don't make any difference because we take them according to time. 1609

Q. You take them according to what? A. We take them inventory according to what time. If it is spring time we take the winter goods at a lower basis and dispose of at forced liquidation.

Q. Do you know what "line" means? A. Line?

Q. Line—l-i-n-e. A. Yes, sir.

Q. What does it mean? A. That is, it means, you know, $50 means a line.

Q. Well, for instance, what would be a five line? A. $250. 1610

Q. Or $2500 or $25,000? A. Well, that's a question, a big line or a small line.

Q. That's what I mean, but it means one-half of what you say. Five line means $250? A. Yes.

Q. Or it might mean $25? A. No.

Q. Could it mean $2500? A. A big line.

Q. Yes. That is what I say. A. We say not a five line but a 50 line.

Q. 50 line? A. Yes. $2500 is a 50 line.

Q. In this price that you quoted—and to whom did you quote this price, Mr. Schulman or Mr. Kreiselman? A. Mr. Kreiselman, if I am not mistaken, because we were 1611 three fellows in the store at that time.

Q. Who was in the store? A. I was there, Mr. Stringer and a fellow by the name—a representative of Morris Amit's office, from Grand Street—Bauman, and if I am not mistaken, Mr. Bauman was called by Mr. Zuckerman.

Q. By Mrs. Zuckerman? A. Mr. Zuckerman—Mr. Bauman.

Q. Did you know anything about $300 relief vouchers that were also in the estate? A. Not at all.

Q. You never heard of that? A. No.

1612 Q. So that wasn't included in your price of $1050? A. No, sir.

Q. And at that time you made absolutely no memo of the price; you just remembered it at that time after Mr. Schulman called it to your mind when he saw you a couple of months ago; is that your testimony, sir? A. Well, I—

Mr. Fielding: I object. He did not testify to that.

Mr. Walsh: That is what he just testified to, if your Honor please.

1613 The Court: I will overrule the objection and let him answer as to whether or not he testified to that.

Q. Isn't that when you remembered the price was $1050? A. Well, that was the price to pay for the stock and that is what I told Mr. Schulman on.

Q. Did Mr. Kreiselman tell you why he wanted an appraisal? A. No, just wants to know the bid on the stock, what it's worth, and he will give it to the creditors. He was one of the creditors' committee.

Q. Did Mr. Stringer also give an affidavit to Mr.—A.

1614 No, sir.

Q. —Schulman? A. No, sir.

Q. Well, Mr. Stringer testified yesterday that Mr. Schwartz sent him down.

Mr. Fielding: I will object to that question.

A. I will correct that—

The Court: I will sustain the objection.

Mr. Walsh: I will withdraw the question.

The Witness: I will correct that. Mr. Stringer—

Q. Never mind that. His Honor has sustained the ob-

jection. You don't have to offer any explanation. You said you were ready to offer $50 more if you could stay in the store for the purpose of disposing of it? A. I did not offer—there was no means of disposing of as long as there was a black mark on it. 1615

Q. Who knew it had a black mark on it? A. Because the man—

Q. Who knew—

Mr. Fielding: Please let the witness answer and do not interrupt him.

The Court: Yes, let him answer that.

Q. (Read.) A. We were told by Mr. Kreiselman that this party cashed certain checks which he went to jail for it, and we could not take the store on account of this black mark, to retail it, to dispose of it on the premises. 1616

Q. Well, the goods, the merchandise—did not know that there was a black mark on it? A. We don't use dummies. We use people of the street.

Q. Well, they did not know there was a black mark on the goods? A. As far as the goods are concerned—

Q. The price of the goods was the same, the same whether he committed a murder; isn't that so? A. What murder? The goods did not know no murder at all. 1617

Q. That is what I say. The people who were buying the goods did not know whether he went to jail or not; the intrinsic value of the goods was the same, no matter what he did? A. No. It's a question of whether the people would come in the store.

Mr. Walsh: That is all.

Mr. Corbin: What was the last answer, please.

(Answer read.)

1618 Redirect examination by Mr. Corbin:

Q. You did sign a paper as you told Mr. Walsh; you signed a paper? A. Yes.

Q. I show you a paper and ask you if it is the one you were asked about and if it is the one that you signed (handing to witness)? A. Right.

Mr. Corbin: Now, Mr. Walsh, I hand you this paper. We want you to have everything that our witnesses signed.

Mr. Walsh: Are you introducing it in evidence, sir?

1619 Mr. Corbin: I leave it to you to do what you will with it.

The Court: Very well, gentlemen. Any further questions from this witness?

Mr. Corbin: No, sir.

The Court: Stand aside.

Mr. Walsh: Just a question, if your Honor please.

The Court: All right.

Recross examination by Mr. Walsh:

Q. Is this your handwriting (handing to witness)? A. No. It is my signature on it.

1620

Q. Whose handwriting is it? A. This handwriting, somebody in the store wrote it out.

Q. Who? A. I couldn't tell you.

Q. Well, did you see him write it out? A. (No answer.)

Q. Is it Schulman's writing? A. It is.

Q. What? A. It is.

Q. It is Schulman's writing? A. (No answer.)

Q. Is that correct? A. Right.

Q. And he says "In April, 1937"—this is your signature; there is no question of that (indicating)? A. My signature.

Q. And this is your stationary? A. My stationary.

Q. And Schulman wrote the body of it and you just signed it, isn't that correct? A. Yes, giving him the statement. 1621

Q. Now in this statement—did you dictate the statement to Mr. Schulman? He just wrote it and you just signed it? A. I just answered him the questions, whatever he asked me and he wrote it out.

Q. Well, he says here, "In April, 1937, I was called up by Jacob Schulman to appraise and bid on an army and navy stock on the Bowery."

I thought you just said that Kreiselman called you up. A. Kreiselman called me, not Schulman.

Q. Well, Schulman wrote it himself that he was the one who called you up. A. Well, Mr. Kreiselman called me but I am giving you the statement what happened. Schulman called Kreiselman and Kreiselman called me. 1622

Q. Now which is correct? A. Kreiselman called me, recommended by Mr. Schulman.

Q. Well, did Kreiselman call you up and ask you to appraise the stock? A. Well, whichever he called the first, and I wasn't there.

Q. Well, is this correct—read that over. A. Yes, I read it. I see.

Q. What is the date of it? A. On May 28th, 1940.

Q. That is not so long ago? A. No. 1623

Q. Well, read it over and tell me if it is correct. A. Well, this is not correctly that Schulman called my office, but Kreiselman called.

Q. Were you trying to fool the Court and the jury when you said a few moments ago that it was somebody in your store that read that? A. I was trying to fool the jury in what way? It just happened that I misplaced my memory who wrote it.

Q. But was only in May, that is only a couple of months ago. A. Right.

1624 Q. And you couldn't remember then who wrote that piece of paper? A. I couldn't remember for the minute who wrote that paper.

Q. And yet you can remember the price in 1937? A. Positive, 100 per cent.

Q. Huh? A. I can remember the price of many stocks outside of this one.

Q. Do you remember saying this: "I went to that store, examined the stock and fixtures, told Mr. Schulman that we would pay $1000 top"? Do you remember that statement? A. Right.

Q. Now which is right, the $1000 top or the $1,050? A.
1625 Up to $1050—$1000.

Q. So this statement isn't correct? A. Well, this was given to Schulman, this statement, after we went through it because as I have said—

Q. After you went through what? A. To pay a thousand dollars for it.

Q. Well, you told on direct—A. But my partner decided we could get the stock up to $1050, we would go $1050.

Q. But you did not say that then? A. I didn't have to say that then but as far as Mr. Schulman is concerned he had the offer of one thousand. Discussing with my partner
1626 we decided if we could get the stock for about $1050 we will take it.

Q. Let me read to you further: "Mr. Schulman tried to have us give a higher offer but we told him that it was not worth more than $1000 and that we could not go higher." Do you remember writing that and signing your name to that? A. Right.

Q. Have you any explanation that you want to give, that you couldn't give them more than a thousand dollars? A. I wouldn't go over $1000. My partner consented that he would go another $50.

Q. Well, you testified that you had offered $1050, didn't

you?. A. We offered to Mr. Kreiselman if we could get it up to $1050 we will take it—not take that. 162

Q. Well, you said right here that the $1000 was the top offer. A. That is the top offer given at that time to Mr. Schulman.

Mr. Walsh: Thank you very much, Mr. Corbin, for that piece of paper.

That is all.

Mr. Corbin: Then I offer it in evidence.

Mr. Walsh: I have no objection.

(Marked Defendants' Exhibit C.)

Mr. Walsh: May I read it to the jury now, if your Honor please? 162

The Court: Yes.

(Mr. Walsh reads Defendants' Exhibit C to jury.)

Mr. Walsh: That is all. Thank you, Mr. Michaels.

By Mr. Fielding:

Q. Then when you and Stringer went down to the store there was somebody there representing Zuckerman, is that right? A. Right.

Q. That was a Mr. Bauman? A. Right. 162

Mr. Fielding: That is all.

The Court: Stand aside.

(Witness excused.)

The Court: Very Well. I will recess this court for ten minutes. The jury may be excused for ten minutes.

(SHORT RECESS.)

The Court: Very well. Who is next?

Mr. Fielding: Mr. Schulman.

Mr. Corbin: Judge, last week we subpoenaed a witness by the name of Sam Rich, and he was here.

1630 pursuant to that subpoena, one day and I think also the following day. Now he was here yesterday morning, and it came to our ears that he left saying "I will see you next week." So we served a new subpoena on him last night at his home. He came in this morning at ten o'clock and immediately left. I don't see him here now. May I have his name called?

The Court: Yes. Let Sam Rich be called.

The Clerk: Is Sam Rich in the courtroom?

(No response.)

The Court: Do you want an attachment for him?

1631 Mr. Corbin: What he said is "I am going out for a cup of coffee." I am afraid he is gone.

The Court: Well, I will give you an attachment now or I will call him later and give you an attachment later. The only thing is I do not want to delay the trial of the case.

Mr. Corbin: I won't ask that, Judge, but I thought I would call it to your attention.

Supposing we let it go for the time being and I will see if he comes back.

The Court: Yes, very well.

1632 JACOB P. SCHULMAN, one of the defendants, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Fielding:

Q. Mr. Schulman, where do you live? A. 218 Beach 131st Street, Rockaway Beach, New York.

Q. And with whom do you live? A. My wife and three children.

Q. What is your profession or occupation? A. A lawyer since November, 1935.

Q. Admitted to the bar of this court? A. I am.

Q. And of the bar of the State of New York? A. I am. 1633

Q. And have you practiced in all of the courts of New York in this State? A. Yes, sir.

Q. And also in this jurisdiction? A. Yes, sir.

Q. Going back to April, 1937, what was your first knowledge or information concerning the matter of Hymowitz?

Mr. Walsh: I object to the question, if your Honor pleases.

The Court: I will overrule the objection.

Mr. Walsh: May I be heard on that for a moment, if your Honor please? He premised his remarks with "April"—"What was the first time you 1634 heard of it."

The Court: I will overrule the objection. He may say when he first heard of it.

A. The first time I heard of the Hymowitz case at any time was about April 3rd, or the day before—the Saturday, which I think was April 3—April 2, 1937.

Q. Well, what was your first information about it? A. I first called by Mr. Schwartz of Schwartz & Zuckerman, a client of mine, who has been, and still is a client of mine for the past ten or twelve years, and he told me this, that about four or five days before there was a meeting of 1635 creditors of this Paul Hymowitz at the office of the Dry Goods and Furnishings Association; that at that time there was a lawyer by the name of Hoffman who was representing the debtor and he told creditors that he wanted to go through with the assignment and he said that creditors would get a substantial dividend through the assignment proceedings; that Schwartz, on the other hand, and Mantis and Kreiselman and others who may have been at the meeting were totally dissatisfied with those promises or assurances of Hoffman, and that they did not wish him to go through with an assignment, and that the final conse-

1636 quence—well, before I come to the final consequence, that during the meeting Mr. Schwartz then said "Never mind your talk of 80 per cent or 70 per cent. Give me definite assurance that 50 per cent or 40 per cent and I will take it," and Hoffman refused to go through. I was also told if he was—

Mr. Walsh: By whom?

The Witness: By Schwartz.

A. (Continuing) I was also told by Mr. Schwartz that he mentioned to Hoffman at the meeting that if he
1637 was sincere about creditors getting a large dividend he could take, in one of their own number in some official status, to more or less supervise or help control the assignment proceeding and that Hoffman refused.

Q. By "one of their number" you mean the creditors? A. Yes, and—

Q. Besides Schwartz and Zuckerman, who were clients of yours, was there any other person at that meeting who was a client of yours? A. Mr. Mantis of the firm of Ribach & Mantis, and—

Q. By the way, do you know the capital, the general capital that is employed by Schwartz & Zuckerman in that
1638 business?

Mr. Walsh: I object to that as immaterial.

The Court: I will overrule the objection.

A. It's upwards of $100,000 for Schwartz & Zuckerman.

Q. And how about Ribach & Mantis? A. Ribach & Mantis is between 125 and 150,000 capital, net.

Q. Were you present at that meeting of creditors? A. I wasn't.

Q. Were you present at the meeting of creditors held at the office of the Dry Goods Association? A. On March 25th in this case; I was not.

Q. Now continuing: After Mr. Schwartz related to you what you just testified, what did you do? A. Well, I didn't complete the conversation that Mr. Schwartz had with me. 16

Q. Well, go ahead. A. Mr. Schwartz told me that the final determination of the meeting at that time was that there should be a cessation or an abeyance of the assignment proceedings altogether, that in the interim creditors would be given an opportunity to examine the stock, have it appraised for the sole purpose of affording creditors an opportunity to get a quick cash substantial settlement on the basis of such appraisal and bids that may be received. He told me further that there was certain days and times fixed for the purpose of having such buyers and appraisers present at the premises, 346 the Bowery, and in several instances the place was closed when it should have been opened, and finally several appraisers were permitted access to the place. He had some buyer, others had others, and that when he communicated with Robert Hoffman on two or three or four occasions, why, he found that Mr. Robert Hoffman was not in—was not in, and Mr. Schwartz left his number and he never received a return call, and so he said to me—Mr. Schwartz did—"Under the circumstances, Schulman, what do you suggest?" 16

I says, "I suggest, perhaps that if I should call him maybe I can have more success or better success in trying to get Mr. Hoffman." 16

Q. Did you call him? A. On or about April 2, 1937, I called him, left my name and number. He wasn't in; left my name and number and received no reply call, and I communicated that fact to Mr. Schwartz.

He said, "Schulman, if that's the case he is trying to double-cross the creditors and we want you to file a petition in bankruptcy against this individual."

Q. Now, did the claims of your two clients come up to the figure required by the Bankruptcy Law in order to

1642 file a petition? A. They did not, and I called this to the attention of Mr. Schwartz, and he said, "Kreiselman will play along with us because he was present at the meeting and he agreed with our ideas as to what form of the liquidation and what settlement we should get."

And I said, "Well, you still have no $500 which is the required amount to file an involuntary petition in creditors' claims," so he said, "You communicate with Morton Goldman's office"—

Mr. Walsh: Who said this?

The Witness: Schwartz.

1643

A. (Continued) "Because he is a lawyer that represented some other creditor or creditors at the meeting. See what they say." And so I communicated with Morton Goldman's office. I spoke to Theodore Goldman and I said to them, "My people were up at this meeting and I understand that Hoffman was at first apparently amenable to cooperating with creditors toward obtaining a settlement rather than go through with the assignment, and now they have difficulty in reaching him by phone or otherwise, and I have had difficulty and my people want me to file a petition in bankruptcy and suggested in view of the fact that their
1644 claims are insufficient that I communicate with your office to find out just how your creditor feels about the situation."

And so Teddy Goldman—Theodore Goldman told me, "I will find out from my creditor and call you back," which he did either late Friday afternoon or Saturday morning. I believe it was late Friday afternoon, April 2, and I communicated again with Mr. Schwartz and I told him that Mr. Goldman's client, who was a creditor for about $260, had the same ideas as they had. "And is it definite that they want a petition in bankruptcy," and he said, "Yes; you sign our name as our attorney to a petition in bankruptcy against Hymowitz. We would much prefer," he says, "to

get the settlement, but if we have a lawyer like Hoffman 1645
who tries to run the assignment himself when we don't want him to run the assignment, file the petition and stop the sale."

Q. He said, "Stop the sale." Did you know at that time that a sale had been contemplated by the assignee? A. The sale was then not only contemplated, it was scheduled for April the 5th.

Q. You knew it? A. I knew it, yes.

Q. Schwartz told you that? A. Yes.

Q. Go ahead. A. The following morning—

Q. April 5th was a Monday, wasn't it? A. April 5th 1646
was a Monday.

Q. On April 3rd what transpired? A. Teddy Goldman called me over to the office and said, "Schulman, I have the papers ready for you; will you sign as attorney for the people?" And I did; I signed the involuntary petition—I signed the involuntary petition in bankruptcy and I signed a petition which they had prepared as attorneys for Ribach & Mantis to—setting forth briefly and generally the circumstances of the assignment and the meeting and that the creditors wanted a settlement rather than an assignment, and therfore I asked that the assignee's sale then scheduled for April 5th at about 10 or 10:30 in the morning 1647
be stayed, and then I understand that one of the boys in Teddy Goldman's office—

Mr. Walsh: Which boy?

The Witness: One of the boys—a boy; I don't know which boy—

A. (Continued) In Teddy Goldman's office went over and filed a petition and obtained the order, signed by Judge Coxe, and they gave me a copy. I in turn made several copies or certified copies or had a certified copy delivered to me, gave it to my process server and had it served on

1648 Hoffman and the auctioneer on Monday at about ten o'clock before the sale.

Q. What happened next? A. At about an hour later or so I received a notice from Robert Hoffman to the effect that he was going to appear before Judge Coxe at 12 o'clock the same morning, to ask that the stay order be vacated. I then communicated with Teddy Goldman and I told him that this notice was served on me and he suggested that in order to eliminate any doubt about it that I call the petitioning creditors to accompany me to Judge Coxe so that they and I could tell Judge Coxe what actually happened at the meeting. I also asked him that he should try

1649 to have his creditor present before Judge Coxe, but his creditor was not present.

Q. Then you appeared before Judge Coxe? A. Right.

Q. Hoffman, you, Schwartz—and who was the other one? A. Hoffman, Wishbow, I, the three creditors: Schwartz, Mantis and Kreiselman—and that's about all.

Q. What happened before Judge Coxe? A. Before Judge Coxe, Hoffman was the first one to talk and he said, "Judge, here we have an assignment sale which we were ready to proceed with in a few minutes, and now we were served—and then we were served with an order staying the sale. In view of the fact that the goods had already been lotted,

1650 that there was an advertisement in the papers setting forth the sale, it would only mean additional expense to creditors to have the sale adjourned or cancelled."

He also said that this petition in bankruptcy would not have been filed were it not for the fact that he opposed Mortin Goldman's attempted domination of this case at the creditors' meeting.

I said to Judge Coxe the following: I said, "I am not interested in anybody's attempted domination of the case at the creditors' meeting or otherwise, and I am not interested in any personal disputes between Hoffman and

Mortin Goldman." I said, "But what I am interested in 1651
is that creditors' wishes should be respected so far as they may be properly respected," and I said to Judge Coxe this: "So far as the additional expense of advertising and lotting and so on and so forth, that if the Underwriters' Salvage Company, the official auctioneer of this Court, should sell, the understanding and the rule is or the understanding between the Underwriters' Salvage Company and this Court is, that where there has been a prior assignment and they come in later to sell, the underwriters, that then there is no duplication of charges for labor or lotting or things of that kind; even though the Underwriters' Salvage Company does check and does possibly relot the merchandise," 1652
so I said, "That's out." "Now," I said, "Judge, here is what happened at the meeting: This man took an assignment for the benefit of creditors without notice and without consent to creditors; that then a meeting of creditors was called and these creditors asked this lawyer Hoffman not to go ahead with the assignment but, rather, to try to effectuate a cash settlement based on a fair appraisal of the merchandise as they are there in the store now, without necessarily making a party for lawyers, for fees and things of that kind;" I says, "and when these creditors did send some appraisers to the place and when they tried 1653
to further the contemplated settlement with the creditors this lawyer persisted and went ahead with the sale and showed an absolute disregard for the creditors' wishes on that score." So I said to Judge Coxe this: "We don't want the assignment. As a matter of fact, we don't want the bankruptcy. We do want a minimized effort or plan to settle the claims of these creditors based upon the value of this merchandise. If Mr. Hoffman will cooperate with creditors then we will try to eliminate the assignment. We will try to eliminate and vacate the bankruptcy and go through on the original plan that the creditors wanted and

1654 which presumably Hoffman acquiesced in at the time of the meeting. On other hand, if Hoffman doesn't wish to go through with that plan, then we will go through the regular routine of bankruptcy. Instead of him—instead of Hoffman or Wishbow, his auctioneer, selling, we will have the Underwriter Salvage Company and this Court sell through an impartial receiver which will be appointed by this Court and go through the regular routine of bankruptcy even though in the final analysis creditors would get less in a bankruptcy case, such as this one was, rather than let Hoffman go through go through with the assignment, but the best thing that creditors wanted was a defi-
1655 nite cash substantial settlement right then and there as quickly as they knew how," and so Judge Coxe turned to the creditors and said—to each one—as a group, and I think each one stood up separately:

"Does that reflect what actually transpired at the creditors' meeting, and is that your wish?"

And each one of them stood up separately and they said, "Yes. Our lawyer told you the entire conversation of what happened at the meeting and his talk to your Honor reflects our wishes in the matter perfectly."

Q. What did Mr. Hoffman have to say? A. Well, after
1656 the Judge—after the Judge heard from the creditors he turned to Hoffman and he said, "Mr. Hoffman, I will have to deny your application. I must adhere to creditors' wishes." He said, "It seems to me that this is a small matter. Go outside and see if you can't adjust your differences."

Q. At any time did Hoffman inform Judge Coxe that Morton and Theodore Goldman and you had conspired together to have an unofficial fund or a secret fund of any kind?

Mr. Walsh: I object to the form of that question, if your Honor please.

The Court: I will overrule the objection. 1657

A. Definitely no.

Q. Was there any statement that Hoffman made to Judge Coxe which in any way imputed illegal actions on the part of the three gentlemen whom I have just referred to, or to any malpractice? A. Not at all; not in the slightest.

Q. Judge Coxe told you to go outside and try to settle it up? A. Right.

Q. And what did you do? A. I turned to Hoffman—outside of Judge Coxe's chambers—and I said to him—I said, "You can't hope to treat creditors in the way that you have been trying to treat them." I said, "It seems to me that you are going on the wrong track." I said, "And if you intend," I said, "to hold and control this assignment case despite creditors' wishes, you are mistaken." I said, "In the first place, you're better off so far as your own client, Hymowitz, is concerned if your effectuate a settlement." 1658

Q. Why did you make that statement? A. I'll tell you why; I explained it to him too. I said, "No matter what settlement is finally arrived at with creditors your man will receive a release of any and all obligations that he may have or the creditors may have against him, or that he may have to creditors, so from your own personal angle or from your own professional angle in your relation with Hymowitz you are better off that way. Second, my creditors then won't have to wait any extended period of time for a small dividend that they might get in an assignment proceeding or in a bankruptcy proceeding, but would rather walk off with a substantial settlement, free from the usually burdensome administration expenses." 1659

So he said, "Well, how can you work that out now?"

I said, "I will tell you what," I says, "it seems to me that Morton Goldman," I says, "who was present at the original creditors' meeting is a more experienced lawyer

1660 than I am and he represents a substantial creditor." I says, "Suppose that you and I and he will sit down at your office, any place, and see if we can't work out some sensible solution of this particular matter so that our original aims of effectuating a quick settlement with creditors and for creditors should be accomplished."

And he said, "All right. When can I meet with"—he says, "I wouldn't like to talk with Goldman about it. I got into a huff at the meeting with him," and so on.

I says, "Forget any personal equations that may exist between you." I said, "You're a lawyer. So is he and so am I. Let us forget these personal angles and let's see
1661 what we can do to work out sensibly," and so he said, "All right, I will try to be at your office tomorrow. In the meantime try to have Morton Goldman present and see what we can do."

Q. Then what happened? A. Well, on April the 7, 1937—I don't know the exact hour—Hoffman came over, and about five minutes or ten minutes or so Morton Goldman came over and the two of them soared at each other like mad chickens.

Mr. Walsh: Like mad what? Mad chickens?

The Witness: Mad chickens.

1662

A. (Continued) And said a few uncomplimentary words to one another, and what not, and I tried to quiet them down. I was in the role of a peacemaker, and the upshot was—or shall I say better language—the substantial part of that conversation was this: There was a dispute between Morton Goldman and Hoffman as to the value of these assets or what it should bring and what it shouldn't bring, and Morton Goldman said, "Well, when you rely on any appraiser that you have, Wishbow or anybody else, that is one thing, but in order to be perfectly fair and impartial about it, why don't you get the appraisal of the Under-

writer Salvage Company; they are the official auctioneers, 1663
recognized by this Court and by a lot of other people. Then you would know how much the assets would be worth. That's one thing. Another thing would be, if Wishbow or anybody else gives you an appraisal, let him guarantee it. It's easy for anybody to say that the stock of merchandise or any other article is worth $1000 or $5000 or anything else, but if there is a guarantee on the appraisal then we know that we are proceeding on something that is definite and substantial, and that we will ultimately receive"—the conclusion of the meeting was, I think, that creditors should be given a further opportunity to send additional buyers to the place and see what it is worth and try to work out a 1664
settlement on what the original creditors wanted at the original meeting.

Q. Was there mention made at that time of some personal loans? A. I think I mentioned to—to Hoffman that in addition to trying to run the assignment proceedings himself he was trying to put in personal loans of some 1200 or $1900 about which there was no—for which there was no support. In other words, creditors were never shown any books or records, bank books or things of that kind, in order to substantiate those claims; I said, "If you are going to make settlement with creditors we will have 1665
to disregard, as we do in usual cases similar to this, we will have to disregard the consideration of personal loans," and he said he would try to get them, he would try to get waivers for those personal loans.

Q. What is the next step after that meeting; what happened next? A. Well, my memory has been refreshed by the reading of these stenographic minutes and what not. About a week later—

Mr. Walsh: What do you mean by "what not"?

The Witness: Beg pardon?

Mr. Fielding: That is just an expression.

1666 A. (Continued) About a week or so later Hoffman came in again and tried to talk to me on what the value of the stock is and what it isn't.

Q. What did he say on that point? A. He started by saying that the stock isn't worth $2000 as he originally thought but it should run very much lower. So I told him that I thought I heard from Phil Cohen of the Dry Goods Association that together with the relief tickets it was worth $1500; that the stock itself was worth between 1000 and $1200, and with relief tickets it was worth $1500, and that Phil Cohen's buyer wasn't interested in the relief tickets. He was simply interested in the stock, so he said,
1667 "Well," he said, "is that about the highest bidder that you have?"

I said, "That's about the highest bidder that I have because I sent over Jack Michaels myself and he told me $1000, and I understand that Schwartz's man offered something like $1100, so he seems to be about the highest bidder, but that doesn't preclude you or anybody else from getting any higher bids." I says, "Could you get anybody else? Let him give $1400, $1500, any amount up to $2000 for the assets so that the settlement should be based on the highest bid."

1668 And he said, "No," he didn't have anybody definite, any man that would beat the bid of Phil Cohen's buyer, and he said, "Let's work out the proposition of this settlement." He says, "But how about fees?"

I said, "Well, I am only one of three or four in the picture. I can only give you my ideas." I said, "It seems to me," I says, "that I would cut out right from the very beginning Kandell and the Association; they are no lawyers and not entitled to compensation except some minor consideration for holding the meeting and doing some paper work." I says, "You, on the other hand, you are attorney for the assignee, you have got a job and you are going to

do some work. I am here as attorney for the petitioning 1669
creditors. I am going to try to effectuate this settlement. Morton Goldman, representing creditors, will be the man who will actually work out the mechanics of it."

I said, "He will be entitled to a fee for his firm and so my opinion—in my own judgment," I says, "there shou' be a three-way division of any fees after we shall have arrived at a definite settlement with the creditors."

Q. What figure was being discussed at that time as the value of the merchandise plus the value of the food tickets? A. $1200 for the merchandise and $300 for the relief tickets.

Q. So that all your conversations were based on that 1670
sum of money as being the fund which was going to be distributed? A. Exactly.

Mr. Walsh: I object to that. I think the witness should testify what the result of it was. That is a leading question.

The Court: Yes, it is leading, but I will overrule the objection. It is more or less of a recapitulation which ought more or less not be done. But I will overrule the objection.

Q. Did you answer the question? A. I said, $1200 for 1671
the merchandise and $300 for the relief tickets.

Q. At any time was any other sum of money mentioned? A. Hoffman tried to think that the relief tickets were worth $400 instead of $300 but from what I understood from Phil Cohen, that Mr. Abramson wouldn't want the relief tickets and that this increased—calculated it to be worth $300 that he would pay for it.

Q. At that time—

Mr. Walsh: May I interrupt for a second?

Will you read that last sentence over, Mr. Stenographer.

(Answer read.)

Q. Did anybody—and by that expression I mean any of those names that you have just mentioned—know definitely at this time the exact value of those food tickets? A. No, sir.

Q. It was a claim against the city that had to be liquidated? A. Exactly.

Q. And $300 was the sum mentioned as what they would probably be worth? A. Exactly.

Q. Using those figures, what did you do regarding a possible settlement with the creditors? A. Well, at the first meeting—I think it was April 7th—we took the round figure of $1500 and said that if $1000 were to be allocated to creditors, that would amount in rough—that is, roughly 40 per cent; there would then be some disbursements of up to about $100. For instance, assignee's premium on bond of $1500; he had another expense of $10. That would make a total of $25, expenses of the assignee. I had $35 expenses in filing the petition and serving the certified copies of the order on Mr. Wishbow and Mr. Hoffman. There were other incidental expenses which would leave about $400 to take care of all other preferred claims and the fees that Mr. Hoffman was talking about. We even said at the first meeting—and so did Mr. Goldman, when Mr. Hoffman mentioned, "Well, who is going to determine the fees," and what not.

"Let any and all creditors, Niehouse, Donaldson or anybody else sit in if we couldn't agree among ourselves; let any or all creditors fix fees. We are not interested. We are interested primarily," and I told him specifically that I represented these people for ten years and I am interested primarily in these creditors rather than a $5 bill more or less. At the second—and so if we would have a fund of about $400 there would be approximately, according to my

own knowledge, 125 or $135 each, from which there would 1675
have to be a re-allocation to cover the expenses of rent, the assignee's rent, any little fee for the assignee, the labor of the auctioneer and possibly some fee, and so that ultimately there would be some net fee for ourselves.

At the second meeting, on or about April 14th, we went into those figures a little bit in greater detail. For instance, I said that—

Mr. Walsh: That "for instance," before he starts, unless it is what he said at the meeting—

Mr. Fielding: Well, we will consent to strike out "for instance." 1676

The Court: Very well.

Mr. Walsh: If it is an example I have no objection, but if he is making an explanation—

Mr. Fielding: I consent to have it stricken out.

The Court: I will permit him to state the conversation.

Mr. Walsh: Yes.

A. (Continued) The conversations on April the 14th, or the week after, centered themselves on how much or how little we could give to the auctioneer and how little we can pay for the assignee's rent claim and the other 1677
incidental expenses, and we figured out that there would be approximately $260 expenses which we would have to pay, which would have the category or status of preferred claims, and here they are:

$50 assignee's fee and expense; $75 rent; $100 auctioneer's labor and expense, which might also include a fee, or being inclusive of a fee, and possibly there was one—$35 for my disbursements. That would leave $1000 to creditors, $260 for these expenses that I just enumerated now, approximately $240 to be divided three ways, between Goldman, Goldman's firm, Hoffman and myself, and out of which—

1678 I beg your pardon, so that that would be approximately $80. And in the course of the conversation Hoffman said to me, "Well, Wishbow wants $100 for himself above his expenses of labor and lotting and what not."

So I said to him, "I won't countenance any such fee. He will actually be making somewhat more even than the lawyers themselves, and since when are auctioneers partners with lawyers?"

At any rate, I told him that if he was amenable to the whole situation, that he should get a bill of sale from his client to cover the fees, to cover the stock, and that if it is agreeable to him and agreeable to Goldman that I would
1679 hold the money or else Goldman could hold the money, it made no difference to me, and that's that.

Q. At any time during these discussions, all of which took place at your office, did they not? A. Right.

Q. Was there any mention made of any basis of settlement using a figure of $1900? A. Never.

Q. What was the only figure, which was the basis for all these discussions, as the quick settlement of the case? A. $1500 comprising as aforementioned.

Q. Everybody sort of agreed that that would be the best way out? A. I had communicated with my people and
1680 they thought that was the best way and they even sent me consents later.

Q. I am coming to that now. After the conferences had been held there was some paper work to be done? A. Right.

Q. And what was that work? A. Well, steps had to be taken to dismiss or vacate the bankruptcy proceeding, and likewise the assignment proceeding. Third, to send out a bulk sales notice to the creditors, based on the figures that we just talked about. Fourth, the bulk sale notice should have the consents or releases to be signed by creditors, and fifth, of course the actual disbursement of the money. There were other incidental matters, such as the

actual collection of the outstanding relief tickets from the 1681
city, the possible adjustment with the city on the City Sales Tax claim, and that's about all that I can think of at the moment.

Q. As a matter of fact, were consents sent out to creditors? A. Yes.

Q. And did your clients consent to the settlement? A. Yes.

Q. At 40 cents on the dollar? A. At 40 cents on the dollar.

Q. Well, the settlement did not go through, did it? A. No.

Q. Why? A. I heard from Teddy Goldman that Hoffman 1682
had been served with a notice to show cause on behalf of Endicott-Johnson.

Q. Who are they? A. Endicott-Johnson, to my knowledge, are shoe dealers of national reputation, and a creditor in this case.

Q. That's it; not represented by you? A. No.

Q. Or by Mr. Goldman? A. No.

Q. Go ahead. A. They are simply an independent creditor that wanted to remove—made a motion or an order to show cause to remove the assignee and his attorney on the ground that those two individuals were selectives or de- 1683
signees of the debtor himself, not indicated or consented to by creditors; and second, that the bulk sale which contemplated a 40 per cent settlement in full release of their claims was not agreeable to them; that it was the policy of Endicott-Johnson to take the settlement if they thought it was fair but not to release the debtor from any balance, and so—

Q. Well, that was a wholly independent action outside of what names that were mentioned here? A. Exactly.

Q. Now subsequently did another creditor refuse to agree to that settlement? A. I once saw in the office of Goldman,

1684 Malter & Goldman some letter from a creditor by the name of Siff, that he did not care to send in a consent to the 40 per cent settlement.

Q. So that the settlement could not go through? A. Exactly.

Q. And it did not go through? A. I should say also with respect to Siff, I think he may have indicated in his letter—the letter wasn't—

Mr. Walsh: I object to what he indicated, unless he can testify.

The Court: I will sustain the objection. I will

1685 permit him to answer to the best of his recollection if he has any.

Mr. Walsh: I will take that.

Q. Give your best recollection. A. Well, my best recollection is that Mr. Siff didn't wish to consent to the 40 per cent settlement or to have the assignment proceeding vacated.

Q. That order to show cause and the motion for which that was the basis never reached argument or decision, did it? A. So far as I know, no.

Q. You had no part of it? A. No.

1686 Q. Well, do you know what did result from that application? A. Yes, sir.

Q. What? A. The application was disposed of and settled in this fashion: Endicott-Johnson selected and recommended another auctioneer who should be the actual auctioneer who should do the actual selling under the assignment proceeding. He was—they were satisfied with that, plus the retention of Goldman, Malter & Goldman as co-attorneys in the assignment proceeding. That's all.

Q. And a stipulation to that effect was signed? A. So far as I know, yes.

Q. Did you attend the sale? A. Yes, sir.

Q. Who sold the property? A. Eddie Lipkowitz, the auctioneer selected by Endicott-Johnson. 1687

Q. And that claim was consummated according to that stipulation? A. Yes, exactly.

Q. How many times were you at the store where the sale was held? A. How many times was I at the store when the sale was held?

Q. I will withdraw that. I am thinking of two questions at once. How many times were you at the store where the sale took place? A. Once.

Q. When was that? A. The date of the sale sometime in the early part of June, 1937.

Q. Were you down there with Abramson? A. Abramson wasn't there at all. 1688

Mr. Walsh: I move to strike the answer out as not responsive.

The Court: I will overrule the objection.

Q. On any other occasion? A. I was not at the store with Mr. Abramson on any other occasion.

Q. Well, you heard Mr. Kolman testify here that you and Abramson were over in a corner, after looking the merchandise over, and he heard very little of the conversation except an expression "five line." Did you hear that testimony? A. I heard that testimony, and I am afraid it is quite— 1689

Q. Is that true? A. It is not true.

Q. Now do you recollect at the sale there were bids made first in bulk? A. (No response.)

Q. You may answer. A. Whether there were sales made in bulk? A. No.

Q. Do you recollect first that there were bids obtained, in bulk? A. Yes, sir.

Q. What was the highest bid made? A. $1350 or $1370.

Mr. Walsh: What was the date?

The Witness: June 5.

1690 Q. 1937? A. Yes, sir.

Q. So that that bid was not accepted? A. That bid was not accepted.

Q. And thereafter the merchandise was sold, lot by lot? A. Single lots.

Q. And what price did they bring? A. Something like $1500.

Q. That is your best recollection? A. Yes, sir.

Q. And what did that sale take in? A. Merchandise and fixtures.

Q. Did you have any further professional activities in connection with the matter from that time on? A. No, except very incidentally and that is this, my creditors were
1691 disappointed when they received a 16 or 17 per cent offer from Mr. Robert Hoffman in the assignment proceedings, and they refused to accept it, and I had to go through the formality of getting an order of the Supreme Court directing the City Chamberlain of the city treasury of the City of New York to pay over their respective dividend checks, because that money had been deposited by Hoffman with the city treasury.

Q. Was there any time in your conversation with Hoffman, or with the Goldmans, any talk about a secret fund?
1692 A. No.

Q. When was the first time you heard of a secret fund? A. When I read it in the newspapers, in the early part of February, when the indictment was found.

Q. And the printing of the news of the indictment carried that information? A. Yes, sir.

Q. And that is the first time you heard of it? A. Exactly.

Q. Did Hoffman make the suggestion to you that—

Mr. Walsh: I object to that as leading.

Mr. Fielding: I don't see how it is leading.

The Court: Let him finish his question first.

Q. At any of those conferences was there any mention made that any sum over and above to pay the creditors should be kept secret? A. No, sir, he never used that word, or they. 1693

Q. You didn't know your office was being subjected to this listening device? A. No, sir.

Q. So there was no need at any time for you to be careful about the setting? A. No.

Q. So you expressed your opinion on some occasions in language that you would not use in a courtroom? A. Right.

Mr. Fielding: Your witness.

The Court: Does any other defense counsel care to ask the witness any questions at this time? 1694

Mr. Corbin: I don't think of anything now, your Honor.

The Court: All right. Cross examination, proceed.

Cross examination by Mr. Walsh:

Q. Your language would have been the same, Mr. Schulman, at the meetings of April 7th, the 14th, 21st and 26th, had you known that a hearing device was against your wall? A. Certainly.

Q. Would it? A. Certainly.

Q. Let me ask you this: Are the conversations which you heard in court that Mr. Bodinger testified to, are they substantially correct? A. No, sir. 1695

Q. They are wrong? A. They are garbled, they are incomplete.

Q. I didn't ask you that. They are wrong? A. Well, they are incomplete.

Q. And they are garbled? A. And they are garbled.

Q. What else? A. That is all I can tell you.

Q. Can you supply the parts in any particular part of the conversation that are incomplete? A. I would be a wizard if I could. Only certain portions I could, after

1696 having my recollection refreshed, but to unravel this I could not do this and I would not undertake to do it.

Q. How long have you epresented the firm of Schwartz & Zuckerman? A. Since about 1927 or 1928.

Q. And did you ask Mr. Schwartz or Mr. Zuckerman to send any appraiser down to the store? A. They did that of their own volition, because that was the substance of the creditors' meeting.

Q. You say you knew nothing about the bankruptcy or insolvency, we may call it that for the time being, of Paul Hymowitz, until April 2nd, 1937? A. Either that day or possibly the day before; I think most likely April 2nd, 1937.

1697 Q. That is what I said, April 2nd. A. That is right.

Q. How long had you been representing Mantis? A. Also since about 1928.

Q. Did you handle all matters for that particular firm? A. I imagine I did, if they gave them to me.

Q. Did you or didn't you? A. I cannot be the judge of that. If they gave matters out to somebody else, I don't know.

Q. Did you consider yourself the attorney for those two firms? A. Yes, sir.

Q. You say that the first time that you heard anything about this was April 2nd, 1937? A. That is right.

1698 Q. And if my memory serves me correctly, you said Mr. Schwartz called you on the telephone, or came up to your office on April 2nd and told you? A. Called up.

Q. Now, Mr. Schwartz was at the meeting of March 25th, wasn't he? A. I assume he was.

Q. So Mr. Schwartz knew the condition of the affairs of Hymowitz from March 25 until April 2, before he consulted with you, is that correct? A. He knew apparently what transpired at the meeting. I don't know what else he knew.

Q. You say he didn't communicate any of the facts that

transpired at the meeting of March 25 until April 2nd, when he came to your office? A. Yes, sir, he then called me up. 1699

Q. He called you up and recited to you what you have said to his Honor and the jury, is that right? A. That is right.

Q. That is the first time you knew anything at all about the Hymowitz affair? A. Exactly.

Q. Prior to April 2nd had you ever communicated with either Theodore or Morton Goldman concerning the Hymowitz matter? A. I don't believe I did.

Q. Did you communicate with them, meaning Theodore and Morton Goldman, on April 2nd? A. April 2nd, yes, sir. 1700

Q. Now when was it you decided to file a petition in bankruptcy against Hymowitz? A. When my people told me to do it on April 2nd, 1937.

Q. You immediately decided to file a petition in bankruptcy? A. I didn't make the decision. The creditors did it.

Q. They told you what happened and they said "We will throw him into bankruptcy"? A. I didn't say any such thing.

Q. Well, what did you say, what else? A. I said on direct examination, Mr. Schwartz, in view of Hoffman's conduct and lack of cooperation said "We want you to file a petition in our behalf." 1701

Q. Was Mr. Schwartz het up about the conduct of Mr. Hoffman? A. He was not content with it.

Q. Did he express to you by words or gestures that he thought Mr. Hoffman was not doing the right thing? A. That is the inference.

Q. Was Mr. Schwartz mad? A. I couldn't tell you what was his degree of madness over the telephone.

Q. I am not asking you about the degree. I am asking you now did he say that he was perturbed about the con-

1702 duct of Hoffman? A. The only way I can characterize it, he was discontented and dissatisfied.

Q. Did you ask him how long he had been discontented and dissatisfied? A. I did not.

Q. He told you he had been from March 25th until April 2nd? A. He didn't tell me he was discontented and dissatisfied. He told me the incidents as to which he directed me to file a petition and from these my inference was that he was discontented.

Q. Did he communicate to you by word that he was dissatisfied? A. Yes, sir, exactly, he told me he called him three or four times over the telephone and could not get
1703 him.

Q. Did he tell you that he tried to communicate with him because of Hoffman's action on March 25 at the creditors' meeting? A. No, it was not discontent as of March 25th; it was two or three or four days that followed, when he could not get hold of him on the telephone.

Q. Well, did he tell you that he was satisfied or that he didn't want to petition, if he could see the store, and appraise the stock? A. That is an incomplete version of what he wanted. In other words, he wanted an appraisal, he wanted a bid, and more important, a settlement. Hoff-
1704 man didn't afford any opportunity to get the settlement.

Q. Well, did you call Mr. Hoffman? You heard him testify here, did you not? A. I heard him plenty.

Q. And he testified to the effect that on March 24th you called him up and asked him and that you told him you represented Schwartz, is that true? A. So far as I know I never called him on March 24th.

Q. Or 25th? A. No, sir.

Q. In other words, you never called him up until about when? A. April 2nd, 1937.

Q. Did you have a conversation with him at that time? A. No. He was supposedly out.

Q. Did you speak with Mr. Kolman? A. No, I never knew 1705
of him.

Q. You knew he was the assignee? A. That was a name, whether in the same office, I didn't know.

Q. I show you Government's Exhibits 5-A; 5-B and 5-C, and also Government's Exhibit 5, and I ask you when for the first time you ever saw those exhibits and knew that they were exhibits sent out on March 25th to all the creditors. A. I may have seen them. I don't know whether I had them at the time that I filed the petition or subsequently; I cannot tell you that.

Q. Did you ever see them? A. Sure I did.

Q. Well, who gave them to you? A. Schwartz and Zucker- 1706
man.

Q. When? A. I don't know, they came in the mail and I didn't make any notation as to when they came.

Q. Did you have those prior to the time you filed the petition? A. That I cannot tell you.

Q. Now did you ever represent Schwartz or Mantis in any other proceeding which involved insolvency? A. Sure.

Q. On many occasions? A. On a number of occasions.

Q. You know something about insolvency proceedings, by that I mean assignment proceedings and also bankruptcy. A. A little bit.

1707

Q. Is that because of your lack of experience or— A. I want to be modest.

Q. You have handled many bankruptcy matters, have you not? A. I don't know what you mean by "many".

Q. Well, would you say you handled one? A. In 1937 I handled four bankruptcies and in 1938 about two and in 1939 about two and in 1940 none; if that is many, fine.

Q. How many did you have prior to 1937? A. In 1936 I handled about six.

Q. When you say bankruptcy, do you mean assignments for the benefit of creditors? A. Assignments for the benefit

1708 of creditors, I don't think I ever had one in two or three years; I don't think I had two assignments where I was attorney, or attorney for the assignee.

Q. Were you associated with any other attorney that did handle bankruptcy matters? A. No, sir.

Q. You never did? A. No, sir.

Q. Were you connected with Theodore Goldman in this particular controversy? A. Only to the point I testified.

Q. Tell me again—

Mr. Fielding: I respectfully ask that the witness be permitted to finish his answer without interrup-
1709 tion.

Mr. Walsh: I am sorry. I was merely trying to save time.

Mr. Fielding: Never mind about saving time.

Mr. Walsh: All right. Thank you.

A. Only to the point, they represented one shoe creditor for $260, who joined my people in filing an involuntary petition in bankruptcy, and to the further point that we tried to cooperate together to effectuate a settlement, which would be agreeable to creditors, even if Hoffman at the beginning was inclined not to cooperate on that basis.

1710 Q. You are talking now about this case? A. I am talking about the Hymowitz case.

Q. Now did Schwartz or Mantis ever come to your office on April 2nd? A. My best recollection is that they didn't. It was largely telephone conversations.

Q. Everything was over the telephone? A. That is my best recollection.

Q. And did you tell them that in your legal opinion it would be better to file a petition in bankruptcy? A. No, they told me.

Q. Did they give you any authorization to sign as attorney in fact? A. Positively.

Q. Now where was the petition in bankruptcy, in the matter of Paul Hymowitz, drawn up? A. In the office of Goldman, Matter & Goldman. 1711

Q. And where were they located then? A. 302 Broadway.

Q. Who drew it up over there? A. I don't know.

Q. You don't know? A. I was not there when it was drawn up. I simply signed it.

Q. Where? A. At their office.

Q. Who handed it to you to sign? A. Theodore.

Q. Theodore Goldman handed you Government's Exhibit 3 in evidence. Is this the petition that he handed to you to sign (showing witness)? A. Let me see the signature, please. That is right. 1712

Q. And at that time did you have any discussion concerning this particular petition? A. Yes, sir.

Q. After you had a conversation with Schwartz, did you also discuss the situation of Hymowitz with Mantis and Ribach on that occasion, too? A. What do you mean the situation?

Q. Schwartz did call you up and tell you he was dissatisfied at the manner in which Hoffman was handling this matter? A. In the manner that I testified to.

Q. Did Ribach and Mantis call you up? A. They were neighbors and it may well be—

Q. Did Mr. Mantis or Mr. Ribach call you up on or about April 2nd and tell you that they too were dissatisfied with the way Robert Hoffman was handling the assignment? A. I will tell you how it happened. Will you permit me? 1713

Q. After you have answered my question, then you can give us any explanation you want, Mr. Schulman. Can you answer the question, first? A. Do you want me to answer the question in your way or in my own way?

The Court: Answer it yes or no, then you can explain it if you wish.

Mr. Walsh: I don't care how he answers.

1714 A. (Continuing) My answer is yes; and here is how it happened: Mantis had been a neighbor of Schwartz's in business and when Mr. Schwartz called me up, apparently he was on his telephone. He told me—

Q. Whose telephone? A. Schwartz's. He told me that Mr. Mantis was in his place of business, and after he got through gave me the explanation that he did. I said "Is Mr. Mantis there, Mr. Schwartz?" He said "Mr. Mantis is here. Do you want to talk with him?" My best recollection is I said to Mr. Mantis, "Are you satisfied the same way as Mr. Schwartz is?" He said, "Yes." "In other words, do you want me to follow the same instruction Mr. Schwartz
1715 gave me?" and he said "Yes."

Q. In other words, Mr. Schwartz and Mr. Mantis instructed you to file a petition in bankruptcy? A. Yes, sir.

Q. And authorized you to sign as attorney in fact in their name? A. In so many words they told me to sign it, and that included the authorization, of course.

Q. Who is Kreiselman? A. He happens to be another creditor in this particular proceeding.

Q. Is he a client of yours? A. He has been, but for five or six years before I never got any matters from him.

Q. Did you or Theodore Goldman get Kreiselman's signature? A. I cannot tell you where or how he signed the
1716 petition.

Q. I want to know how he came to sign it, Kreiselman. A. I cannot tell you, I don't know.

Q. Did you know that he was a creditor? A. Sure I knew he was a creditor.

Q. Who told you that? A. Mr. Schwartz did.

Q. Who? A. Mr. Schwartz.

Q. Did you communicate that information that Kreiselman was a creditor to Theodore Goldman? A. Yes, sir, I told him that I believed Schwartz & Zuckerman, Ribach and Mantis, and that another neighbor of theirs is Mr.

Kreiselman who is another one who would play along or go along with them in joining in this petition. 171

Q. Now who is Harry Levy? A. Well, Levy I never met him. I understand he is a client of Goldman, Malter & Goldman.

Q. I call your attention, Mr. Schulman, to this paper; you signed this on April 3rd, 1937, is that correct? A. Yes, that is correct.

Q. That was a Saturday? A. I think so.

Q. And where did you sign that? A. In Theodore Goldman's presence.

Q. Was Theodore Goldman present at that time? A. Yes, sir. 171

Q. And before you signed it, and correct me if I am wrong, I presume you looked over the petition? A. I looked it over.

Q. You read this petition? A. I glanced over it.

Q. You ordinarily do that for the protection of your clients when you represent them? A. I glanced over it to see if it was the right one, that it related to Hymowitz.

Q. Naturally for the protection of your clients? A. To see if it was the proper petition to file.

Q. What was the purpose? The purpose was to protect your clients, wasn't that the fact? A. No, the purpose was to vacate it, Hymowitz was in bankruptcy— 171

Q. You cannot do it unless you file a proper petition. Did Schwartz and Mantis tell you to file a petition? A. They told me to execute the petition in their behalf against Hymowitz. That is what I did.

Q. Were you not interested to see whether the petition was correct? A. Yes, sir.

Q. Therefore you looked it over? A. Certainly I did.

Q. Were you there when Kreiselman signed that? A. No, sir.

Q. Or Harry Levy? A. No, sir.

1720 Q. Do you know Harry Levy? A. I never met him in my life.

Q. Can you answer this question: Did you sign before Kreiselman and Harry Levy? A. My best recollection is the names of Kreiselman and Levy were on there before I signed it, on that petition. In other words, I was the last one to sign it.

Q. So the names of Kreiselman and Harry Levy were on there, written in before you signed it? A. Before I signed it.

Q. And this had all been done in the office of Theodore Goldman? A. I signed my name in the office of Theodore
1721 Goldman.

Q. And the acknowledgment also was in Theodore Goldman's office? A. Yes, sir.

Q. And Theodore Goldman had given to you this petition? A. Yes, sir.

Q. And you looked it over? A. Yes, sir.

Q. The act of bankruptcy, which is claimed here, Mr. Schulman, is the fact that the petitioner transferred and set over to certain individuals money in the amount of approximately $500, which should have been applicable to the debts of the alleged bankrupt. In other words, did you have any proof or did you know at any time that Hymowitz
1722 had set over and paid, within the past four months, moneys to creditors, in anticipation of bankruptcy? A. Your question begins with a wrong premise. It is not that the petitioner paid over $500. It is that the alleged bankrupt paid over $500.

Mr. Walsh: I am sorry.

Q. The alleged bankrupt? A. Right.

Q. Did you know that? A. No, that is the general allegation used in all bankruptcy petitions.

Q. I understand that if you have no other basis on which 1723
to predicate— A. I wouldn't say that either.

Q. May I call your attention to the fact that No. 6 is a specific allegation to the effect that the alleged bankrupt has made an assignment for the benefit of creditors? A. That is right.

Q. And you knew that at the time you filed it, didn't you? A. Sure I did.

Q. You knew nothing about $500, did you, being paid over by Hymowitz? A. That is a general allegation. You will find that in a thousand petitions.

Q. Maybe there was some basis for the thousand petitions. What I want you to tell me is, you used an act 1724
of bankruptcy which you knew was a fact? A. Better ask that of the legal draftsman.

Q. Who is the legal draftsman? A. Theodore Goldman. I say he did.

Q. You knew you were going to make a motion to dismiss the petition? A. No, sir.

Q. You were served with a petition by Mr. Hoffman, were you not? A. No, I was served with an affidavit of Mr. Hoffman through Goldman's office.

Q. And that was served as a result of the conversations which were had in order to vacate and eliminate the bank- 1725
ruptcy and eliminate the assignment? I show you Government's Exhibit 3, and ask you whether that is the affidavit and the motion? A. That is right.

Q. And were you familiar with how easily that that petition could have been dismissed, because you didn't say it had been for an assignment? A. Because I didn't allege to go in to bankruptcy as an assignment for the benefit of creditors.

Q. I will take it that way. A. No, I would not say that.

Q. You don't know that? A. What do you mean I don't know that?

1726 Q. Let me put it this way: Did you know that there was a jurisdictional defect when that petition in bankruptcy was drawn up and that it could be easily dismissed at any time because of the jurisdictional defect? Did you know that at that time? A. There is no jurisdictional defect in this involuntary petition as it is drawn, and nobody can say otherwise.

Q. I am trying to get your reaction as of April 3, 1937. Did you know at that time that there was no jurisdictional defect? A. Certainly there is no jurisdictional defect in this involuntary petition.

Q. I asked you did you know that? A. Certainly.

1727 Q. Your answer is "no"? A. Yes, sir.

Q. Which was subsequently dismissed because of a jurisdictional defect? A. No.

Q. On what ground? A. On the ground that the allegations were not set forth in detail.

Q. Would that be a jurisdictional defect? A. No, simply a question of pleading.

Q. What do you call it? A. Simply a motion addressed to the pleadings.

Q. Did you know on April 3rd, 1937, that it could have been dismissed because no specific allegations of bankruptcy was made? A. No.

1728 Q. You didn't look at it at that time in that light? A. Not in that light.

Q. When this was served on you, Government's Exhibit 3, which is the affidavit and notice of motion, a copy of this was served on you on what day? A. It says here May 6, 1937.

Q. Is that correct? A. I assume that is correct. I have no personal knowledge of it.

Q. Did you appear in opposition to this? A. No, I didn't.

Q. You didn't? A. No, I would not.

Q. It had been agreed at that time to dismiss the peti- 1729
tion? A. To dismiss the petition, to dismiss the assign-ment and vacate the 40 per cent settlement.

Q. Between whom was this agreement made? A. Well, that was my talk with Mr. Hoffman and my talk with my creditors.

Q. Did Goldman enter into this talk at all about the dismissal? A. I had assumed that the Goldmans were equally desirous of furthering this idea, which had been the original idea at the creditors' meeting, and about which I spoke to Judge Coxe.

Q. Now on April 2nd, after Schwartz called you up, did you immediately get in touch with Theodore Goldman? 1730
A. No, I tried to get in touch with Mr. Hoffman and I could not. I called my people back and told them he is not there, he has not called them, and then they suggested calling up on my phone Goldman, Malter & Goldman, to find out if they had a creditor who would join them in a petition in bankruptcy.

Q. Did you know on April 2nd, 1937, that the sale was scheduled to take place on the 5th of April? A. I most likely did know it.

Q. Well, did you? A. My best recollection is that very likely I knew it.

Q. And isn't that the only reason that the petition in 1731
bankruptcy was filed, to stop that sale, so you could get in on this picture? A. No, sir.

Q. Well, were you opposed to the sale going through? A. I certainly was.

Q. Because Mr. Schwartz told you that he was opposed to it, is that the reason? A. I was opposed to it from the entire story that Mr. Schwartz gave me.

Q. When you were over at Goldman's office on April 3rd, 1937, and the time that you signed this petition, did you have a conversation with Theodore Goldman? A. Sure I did.

1732 Q. Tell us everything you said and everything he said to you, will you? A. I said to him, originally his firm's name, Goldman, Malter & Goldman, and his firm's address, 302 Broadway, was typewritten on the petition, and I said to him, "I think it would be a good idea if you use my name, for the reason my creditors might not like to be represented by somebody else that they don't know very well, and it might be better that you insert my name as attorney for the petitioning creditors and my address." That he did. I also asked him, "Will you consent for this petition to be filed and I have an order signed at the same time, and send me a conformed or certified copy after
1733 signing, so I can take care of the serving of Hoffman and Wishbow, the auctioneer." That was the sum and substance of that conversation.

Q. Do you remember anything else that was said? A. No.

Q. You say that Theodore Goldman drew this petition, being Government's Exhibit 3? A. I didn't say that. I told you he handed me it to sign. Whether he or X Y Z drew it up, I don't know. I told you that before.

Q. I am sorry. A. Well, I accept your apology.

Q. Although you didn't draw this petition up, or know whether Mr. Goldman drew it up, nevertheless you are
1734 supposed to be the one who had charge of it? A. It was prepared in a high class legal office and I am satisfied with that.

Q. Do you usually allow your name to be used by other people that draw petitions up? A. No, but when I am working in cooperation with good lawyers I can let them prepare papers for me, and let them sign.

Q. Are Merton Goldman or Theodore Goldman experts in bankruptcy? A. I don't know whether they are experts, but I regarded them highly.

Q. In what other way? A. In every way, from the code of ethics to—

Q. Incidentally, did you read the code of ethics? A. I did. It was one of the requirements before I was admitted to the bar. 1735

Mr. Walsh: I withdraw that.

The Witness: I answered it.

Q. Did you have confidence in the manner in which the Goldmans could, if they did, draw up a petition, and you allowed your name to be used to it, did you? A. I certainly did.

Q. Well, they had quite a little experience in bankruptcy? A. They had more than I did.

Q. Much more? A. I don't know exactly what their number of cases totalled but I know it was more than mine. I was a single practitioner. They had a good office. 1736

Q. Did you know Morton Goldman was the secretary of the Committee on Bankruptcy? A. I never heard of that until I read it in the papers.

Mr. Fielding: What association?

Mr. Walsh: Bar Association of Brooklyn.

A. (Continuing) I don't think he is secretary of the Brooklyn Bar Association. He is the secretary of a committee in the Brooklyn Bar Association, according to the newspaper reports. 1737

Q. Most of your information is gotten from the newspapers, is it? A. Most of my information about Morton Goldman being the secretary of some committee in the Bar Association is from the newspapers.

Q. You also testified that the first time you ever heard of a secret fund that was to be split up between yourself, Hoffman and the Goldmans, was in the newspapers. A. Right, because whoever got this indictment ran to the newspaper quick.

Q. They did? A. Oh, quick.

1738 Q. Now, is it not a fact, Mr. Schulman, that the reason that you got Harry Levy and Kreiselman was because of the fact that you yourself didn't have $500 worth of creditors? A. That is a very unfair question. I never got Harry Levy. I never spoke to him in my life, and I never saw him. How could I get him?

Q. I ask you whether or not isn't that the reason you got in touch with Theodore Goldman? A. The reason I got in touch with Theodore Goldman was because my people wanted to file a petition in bankruptcy and their claims did not total $500, and my clients who were interested suggested that I call up the firm of Goldman, Malter &
1739 Goldman for the purpose of having their creditors join with them in this step.

Q. Did you have a list of cerditors before you called up Goldman? A. No, sir. I never had a list of creditors until Mr. Hoffman gave it to me in the middle of March, 1937.

Q. Is that the first time? A. That is the first time.

Q. Now you say subsequently, on April 5, you appeared before Judge Coxe? A. That is right.

Q. You are not tired, are you? A. I have been tired for the last two years, and more than that.

1740 Q. What happened before Judge Coxe? Did you say to him that you had nothing to do with the Goldmans in this matter? A. No. Why would I say that?

Q. Well, what did you say then? A. When Hoffman made some kind of a remark, that the only reason for filing the petition in bankruptcy was because Morton Goldman wanted to dominate it, and I would not let him. I told him I was not interested between Morton Goldman and himself. I was interested in the creditors who told me to go for them and whom I represented for the last ten years.

Q. Did you tell Judge Coxe you had nothing to do with the Goldmans in this proceeding? A. I deny that.

Q. You heard Mr. Hoffman testify to that? A. I don't 1741
believe he testified to that, to the contrary. I may be mistaken on that point.

Q. I don't understand you. A. I don't believe Mr. Hoffman testified in this court that I told Judge Coxe I had nothing to do with the Goldmans. I may be mistaken on that point.

Q. Well, I will read you the answer to make sure that there is no disagreement about it. I read from page 87, Hoffman on direct:

"Q. Well, tell us what he did before he did something finally and tell us what he did finally. A. Well, I ex- 1742
plained to—rather, I stated to Judge Coxe all the facts in that case, and then Mr. Schulman made a statement that he was not interested in Mr. Morton Goldman, that he represented the petitioning creditors, and if there were any argument between Mr. Goldman and myself, he was not interested in it."

Is that correct? A. That is what he testified to?

Q. Was that what you said? A. No, I told Judge Coxe I was not interested in any personal equation between Morton Goldman and Hoffman.

Q. You also testified you were not interested in the domination of Mr. Goldman. A. I didn't. 1743

Q. "That I am not interested in any domination by Mr. Goldman," before Judge Coxe. A. I didn't say so.

Q. You are sure of that, that you didn't state it, "I am not interested in any domination by Mr. Goldman"? That was on your direct examination. A. I said I am not interested in any dispute between Hoffman and Goldman with respect to Goldman's attempted domination of this case.

Q. You are not interested in any dispute between Hoffman and Goldman, so far as the domination by Morton

1744 Goldman in this case; is that what you said to Judge Coxe? A. Again I tell you I did not.

Q. Is that what you said? A. I don't think in that language.

Q. Tell me what you did say.

Mr. Fielding: I object to this as repetitious.

The Court: Just a minute.

Mr. Fielding: Your Honor, I object to it as repetitious.

The Court: Objection overruled. Cross-examination.

1745

Q. Now tell us once and for all what you did say after Mr. Hoffman made his remarks concerning his transaction with Goldman. A. Hoffman told Judge Coxe—

Q. I am asking you what you said. A. All right.

Q. Thank you. A. I said that "I am not interested in any personal dispute between Goldman and Hoffman, relative to Goldman's attempt to dominate this case. I am here as attorney for these creditors, who are sitting before your Honor."

Q. What was the attempted domination of Goldman that you knew of on April 5th when you made that remark to
1746 Judge Coxe? A. The only thing I knew of the question of domination was what Mr. Hoffman told Judge Coxe.

Q. You knew nothing about it at all up to that moment? A. That is right.

Q. You were surprised when Mr. Hoffman made those accusations against Mr. Goldman? A. Between you and me I thought they were immaterial and it didn't register any surprise to me. I simply disregarded it.

Q. You heard Mr. Hoffman testify here? A. I did.

Q. And you heard him testify what he stated before Judge Coxe? A. If Hoffman had said that before Judge

Coxe, Judge Coxe would have sent for a stenographer and 1747
an Assistant District Attorney immediately.

Q. Let us leave out Judge Coxe and what he did, let us leave it out of the picture. A. Certainly.

Q. You don't know what Judge Coxe did in this case? A. No.

The Court: One at a time.

Mr. Fielding: I ask the Government to stick to the question and not give lectures.

Mr. Walsh: I am not giving lectures. He is telling me what Judge Coxe was going to do and as he didn't—

The Court: Ask your question. I will rule on 1748
each question as it comes up. You may proceed, Mr. Walsh.

Q. Did Judge Coxe also tell you in court that because the Goldmans were not present and that they are representing creditors who wanted to do something, that he was going to abide by the creditors' decision? A. That is a double-barreled question.

Mr. Walsh: Well, I withdraw it.

Q. Did Judge Coxe say, "I will not say anything about 1749
the Goldmans, because they are not here at the present time"? A. He did not.

Q. He did say, however, after asking the creditors, "I will abide by your decision," is that correct? A. Yes, sir.

Q. Now you heard Mr. Hoffman testify as to what he told Judge Coxe at that hearing? A. That is right, I heard it.

Q. Well, did Mr. Hoffman tell Judge Coxe what he testified he said from the witness stand? A. No, sir.

Q. What did he tell Judge Coxe? A. Mr. Hoffman ad-

1750 dressed Judge Coxe in the following manner, he said, "Judge, I am attorney for the assignee in a certain transaction, and I don't want to take up your time and the Government's, because I have got everything lotted, and my auctioneer has concluded all the preparations for the sale. The sale was about to go on at 10.30. It was duly advertised, when in came this ex parte order to stop the sale in the interest of creditors, and in the interest of everybody concerned I make an application that I should be permitted, as attorney for the assignee, to continue with the sale."

He also said that were it not for the fact that Morton Goldman tried to dominate this case, no petition in bank-
1751 ruptcy would have been filed, and of course that Hoffman recited Morton Goldman's attempted domination of the case.

Q. Now I show you Government's Exhibit 3, and it is the petition and order in the matter of Paul Hymowitz, and I ask you whether or not that is your signature (showing paper to witness)? A. Yes, sir, it is.

Q. You also signed on April 3, 1937? A. That is right.

Q. And this is an order to stay the sale which was supposed to take place on the 5th day of April, 1937? A. This is a petition and order.

Q. Petition and order? A. You only said order.

Q. Is that what it is? A. That is what it is.

1752 Q. Now at that time when filing the petition, the involuntary petition in bankruptcy, did you intend at that time to stop the sale? A. Certainly.

Q. In other words, these papers were drawn up at the same time? A. Simultaneously; they were executed simultaneously. I don't know when they were drawn up.

Q. Where was this paper drawn up that you call the petition and order? A. The petition and order was handed to me by Mr. Theodore Goldman. I assume that it was drawn up in his office.

Q. Did you read it over? A. I did.

Q. And signed it? A. Yes, sir. 1753

Q. You see here, paragraph 3, "on the 24th day of March, 1937, the alleged bankrupt executed a general assignment." You know that was done? A. That was the truth, that was the fact.

Q. Are you responsible for what is in this affidavit? A. I am certainly responsible for everything that is above my signature.

Q. You say in paragraph 5: "The attorney for the alleged bankrupt now refuses to make any offer of settlement and insists upon liquidation of the assets in the assignment proceeding." Who told you that? A. Schwartz told me that, and it was corroborated when I had spoken to 1754
Teddy Goldman, to find out his experiences with Hoffman in connection with following up the settlement with creditors.

Q. Well, you say you read the foregoing petition "and know the contents thereof." A. That is right.

Q. "And the same is true of his own knowledge." A. That is right.

Q. You state here, "The attorney for the alleged bankrupt now refuses to make any offer." Did you ask the attorney for the alleged bankrupt to make an offer of settlement? A. No.

Q. Well, that is what is in the affidavit. A. Oh no, it 1755
doesn't say that at all.

Q. Doesn't it? A. No. I had knowledge from my client of the facts in that petition.

Q. So you got this from Schwartz? A. I got it from Schwartz.

Q. Did you tell all the facts in this petition to Theodore Goldman before he drew this petition up? A. No.

Q. Where did he get the information if you did not tell him about what your client had told you? A. I told him what my client had told me, but I didn't—

1756 Q. Well, that is what I just asked you, and you said "No." A. No. You asked me whether I told him all the facts that are contained in this petition and I said "No," and I still say "No." I want to repeat that. I told Teddy Goldman—Theodore Goldman—what my client's experience was, what my experience was, to check it with his client and his experience, and for that purpose to draw the necessary papers; nothing else.

Q. For the stay of the sale? A. We didn't even talk about a stay of the sale on the day before. We simply said "File the petition, an involuntary petition in bankruptcy."

1757 Q. Weren't both these papers drawn on the 3rd of April, 1937? A. I told you before that they were executed simultaneously, when they were drawn—

Q. That is what I mean. A. Yes.

Q. In other words, the involuntary petition was executed, and Government's Exhibit 3, which is the petition and order to stay the sale, was executed at one and the same time? A. I executed both at the same time.

Q. Yes. A. Yes, that is right.

Q. And at that time they had already—Kreiselman and Levy had executed the papers? A. Their signature appeared there.

1758. Q. So did your clients ask you to stay the sale? A. My clients told me to stay the sale, yes.

Q. Now, were you in communication with Theodore Goldman or the firm of Goldman, Malter & Goldman before this petition and order were served on Kolman and Hoffman at the store at 346 Bowery? A. The only communication was that one of their boys brought a certified or a conformed copy of Judge Coxe's order of April 3 to my office. That is the only communication.

Q. Now when did you say that you were down to the store at 346 Bowery? A. On the date of the assignee's sale, some time in June of 1937.

Q. You did not go down on this date? A. No. 1759

Q. Did you ever go down with Mr. Abramson? A. No, sir.

Q. Or with Mr. Lieberman? A. No, sir.

Q. You are positive of that? A. Positive of that.

Q. Do you keep a diary in which you make notations of what you do? A. In 1937 I kept a diary largely devoted to litigation. In other words, court calendars, if I tried a case or if I am supposed to answer a motion or argue a motion, it would be in the diary. From 1938 on, say September, 1938 on, I keep a more detailed diary.

Q. Now after the meeting in Judge Coxe's chambers, or in the court, on April 3rd I believe it was—was it? 1760
A. April 5th.

Q. April 5th, you went over with Mr. Hoffman and Mr. Wishbow to your office, is that correct? A. I think so, yes.

Q. And did you have a conversation with Mr. Hoffman on that occasion? A. Yes, sure.

Q. And did you subsequently and at that time make an appointment for April 7th? A. I don't know whether it was the appointment for April 7th. I told them that I would—I told Mr. Hoffman that I would call in Mr. Morton Goldman to supervise, to work out the mechanics of effectuating a settlement based on the proposition that 1761
the petition should be eliminated, the petition in bankruptcy, and that the assignment should be eliminated or vacated.

Q. Now, between April 5th and April 7th when you had another conversation with Mr. Hoffman, did you see Mr. Morton Goldman at any time? A. I don't think so, no.

Q. Did you know Morton Goldman was mad at Mr. Hoffman before he came into your office on April 7th? A. I assumed that there was unfriendliness between—

Q. Why? A. —between Hoffman and Goldman, yes.

1762 Q. Why? A. Because Hoffman had made this speech to the Judge.

Q. Well, there was nothing improper in that speech, was there? A. Well, I wouldn't say there was anything improper, but it led me to believe this, that Hoffman resented the idea that he was to be—that his assignment proceeding was to be superseded by this bankruptcy and thereby he would be deprived of a fee.

Q. Well, you were the attorney for the petitioning creditor? A. Sure I was.

Q. Goldman had nothing to do with that, did he? A. He certainly did.

1763 Q. Except furnish you, as attorney for the petitioning creditor, another creditor to get the figure of $500; that is all Goldman had to do with it, didn't he? A. I wouldn't say that.

Q. Well, what else did he have to do with it? A. When he recommended to his client that his client should join in a petition of bankruptcy, I take it that he remained professionally responsible to his client to see that the matter was properly handled. The mere furnishing of a name or a client doesn't necessarily relieve his professional obligation.

Q. Why, that was all prepared in the offices of Morton 1764 Goldman and Theodore Goldman, wasn't it? A. What was all prepared?

Q. The petition in bankruptcy, the involuntary petition in bankruptcy. A. I assume that to be the fact.

Q. All right, and also the order and the petition were prepared there too? A. Exactly.

Q. Now I ask you again whether between April 5th and 7th, and prior to the time you called Goldman up on the telephone to come over to that meeting, did you have a conversation with Morton Goldman? A. I know the transcript says I had a conversation with him for an hour

and twenty minutes, but I still say I did not have such 1765
a conversation because if you follow the transcript you will find that the following sentences—questions and answers negative that idea.

Q. You have read the transcript over very carefully? A. I hope I did.

Q. I hope you did, too.

Mr. Fielding: I move that be stricken from the record.

The Court: I will sustain the objection, that is, the remark of the District Attorney is stricken.

1766

Q. Have you had many dealings with Mr. Theodore Goldman prior to this assignment of March 24, 1937, in bankruptcy or insolvency proceedings? A. Two or three occasions maybe in ten years.

Q. Well, when Morton Goldman came to the meeting on April 7th, 1937, was he mad at Hoffman on that occasion? A. I wouldn't like to use the word "mad" to any human being. One is a mad dog. He might have been angry.

Q. Well, I will let you rephrase that question for me. What will you call it? A. Angry.

Q. Well, was he angry? A. Unfriendly, yes. 1767

Q. Was he angry and unfriendly? A. Yes.

Q. And did he continue to be angry and unfriendly to Mr. Hoffman throughout the whole meeting? A. No, his feelings subsided somewhat.

Q. I mean, he remained friendly or he left the room friendly with Mr. Hoffman? A. No, I wouldn't say that either. His unfriendliness may have subsided, but I wouldn't say that his unfriendliness subsided to the point of being friendly.

Q. When did you first find out that Mr. Morton Goldman was unfriendly and angry at Hoffman? A. I knew it—

1768 I assumed that on April the 5th when we went up before Judge Coxe and I saw it in that man's eyes when he came into the office on April 7th.

Q. You assumed that Morton Goldman was angry and unfriendly to Hoffman on April 5th? A. No. I assumed that—

Q. Isn't that what you just said? A. If I said it, let me put it to you this way.

Q. All right, I will let you put it any way. A. I assumed there was some ill feeling between the two of them as the result of the conversation or the speech made by Hoffman to Judge Coxe and also—

1769 Q. We will go just that far. A. All right.

Q. But there wasn't anything that Hoffman said to Judge Coxe that would cause Goldman to be unfriendly to him, according to your version of the story, was there? A. I would say yes.

Q. What was it? A. The fact that Morton Goldman was instrumental in displacing, in superseding his assignment and depriving him of a fee in the assignment proceeding.

Q. Did he say that, too, before Judge Coxe? A. I assumed that.

Q. Well, I am asking you now what Hoffman said before

1770 Judge Coxe that led you to assume that he, Morton Goldman, would be angry with him. A. Sure.

Q. That's the specific question. A. Yes.

Q. Do you understand that, sir? A. Yes.

Q. Now, what is your answer? A. My answer is that Mr. Hoffman told Judge Coxe that this bankruptcy proceeding would not have been born or filed were it not for the fact that Morton Goldman tried to dominate this particular insolvency case, which he resisted and that there was no necessity for a bankruptcy in Hoffman's opinion.

Q. Well, did you communicate that information, what

Mr. Hoffman said, to Morton Goldman, after the meeting? 1771
A. No.

Q. In other words, the first time that you had any conversation with Morton Goldman after the meeting before Judge Coxe was at your office on April 7th, 1937, about 5.15, is that correct? A. I called them up to come over before that.

Q. Yes. A. Yes, that is right.

Q. And did you tell him when you called him up anything about the conversation or what Mr. Hoffman had told Judge Coxe? A. At the meeting?

Q. Yes. A. It—my best recollection is that when the two of them came in and they were angry at one another, 1772
so I wanted—that is, I tried to make peace amongst—between them, and Goldman's attitude was "Why did you have to make any unwarranted statements before Judge Coxe about me?" That is all there is to it.

Q. Who said that? A. It wasn't said in so many words, but that was the drift—

Q. You assumed that was how Goldman felt about that situation? A. No. That was the drift, the atmosphere. That was the actual fact that existed.

Q. Had you communicated at any time prior to that time when you saw Morton Goldman on April 7th what Mr. Hoffman had said in the courtroom before Judge 1773
Coxe? A. I may have left word with Teddy or with somebody in the office that the application was denied and that Hoffman wasn't exactly friendly to Morton Goldman.

Q. You may have. Do you remember whether or not you did? A. I couldn't say.

Q. You don't know? A. I couldn't swear to it one way or the other. I mean, I am only—

Q. Did you tell Teddy Goldman that? A. I couldn't actually reconstruct a thing of this kind.

Q. But at any event we are satisfied now, and we are agreed on this one point, that when Morton Goldman

1774 came into your office at 277 Broadway on April 7, 1937, at approximately five o'clock, he was very mad—he was very angry and unfriendly toward Mr. Hoffman? A. There was an atmosphere of ill will between them, yes.

Q. Do you remember having read—this is Exihibt 20-A—reading from Exhibit 20-A on page 2—do you remember having read the transcript—and you had a copy of this, did you not? A. I did.

Q. You read them over? A. Mr. Fielding and I discussed it.

Q. Together? A. Yes, sir.

Q. And according to Bodinger's notes he said this:

1775 "Hoffman: Did you see Goldman the other day? Did you speak with him?"

Mr. Fielding: Where are you reading from?

Mr. Walsh: Page 2, right in the middle.

Mr. Fielding: What date?

Mr. Walsh: The conversation of April 7th, 1937.

Mr. Fielding: That is Exhibit 21.

Mr. Walsh: 21-A.

Mr. Fielding: Yes, I find it.

Q. Do you remember, or I ask you did this happen:

1776 "Hoffman: Did you see Goldman the other day? Did you speak with him?

"Schulman: For an hour and twenty minutes."

A. It did not happen. Morton Goldman is not so loquacious as to talk for an hour and twenty minutes on anything.

Q. Well, I am not interested at the present time on how loquacious Mr. Goldman is. Did you or did you not—A. No.

Q. Did you speak to him for twenty minutes? A. I don't think so. I don't think I spoke—

Q. Well, did you or didn't you? A. No. 1777

Q. You did not speak to him at all? A. No, sir.

Q. So that is one of the parts that is garbled? A. Call it what you will.

Mr. Fielding: I object to the form of that question.

Mr. Walsh: Well, that is what he said, the reason it was garbled and incorrect.

The Court: I will sustain the objection to that, to the form of the question. You can ask him whether that is true or not.

1778

Q. Is that true? A. That there was such a conversation? No.

Q. So you did not see Morton Goldman? A. I didn't talk to him for an hour and 20 minutes.

Q. Well, did you talk to him for a second? A. I don't think so.

Q. Did you talk to him for two seconds? A. No, sir.

Q. You didn't speak to him at all? A. At all is right.

Q. Did you see him personally between April 5th and April the 7th when he came up to your office? A. Not at all that I can—

Q. Did you speak to him over the telephone? A. I don't think so. 1779

Q. Well, did you or didn't you? A. My best recollection is no.

Q. Did you communicate with him directly or indirectly through his brother, Teddy Goldman? A. I may have left word at the office that Judge Coxe denied the application.

Q. Well, did you or didn't you? A. I think I did.

Q. And with whom did you speak? A. I don't recall—I don't recall.

Q. Was it Teddy Goldman? A. I wouldn't say.

1780 Q. Was it Morton Goldman? A. I wouldn't say.

Q. It was a Saturday afternoon, wasn't it? A. I wouldn't say—no, it was Monday afternoon. April 5th, it was Monday.

Q. Monday? A. Right.

Q. And what time did you get finished with the hearing before Judge Coxe? A. Approximately 12:30.

Q. And so you didn't communicate with Morton Goldman from April 5, 12:30, until five o'clock on April the 7th; is that your testimony? A. Other than to leave word that Judge Coxe denied the application of Mr. Hoffman.

Q. Well, with whom did you leave that information?

1781 A. I don't know. It could be—

Q. Was it Teddy Goldman? A. It could be with the telephone operator; I don't know.

Q. I know it could be anything, Mr. Schulman. I want to know what you remember. A. I can't remember that little detail.

Q. But you say Goldman came into the office and he was angry and unfriendly toward Hoffman? A. Exactly, on April—

Q. Well, do you know where Mr. Goldman got the impression or do you know where Morton Goldman heard what Hoffman said before Judge Coxe? A. I don't know.

1782 Q. You don't know that at all? A. No.

Q. And you did not communicate what he said directly or indirectly to Mr. Morton Goldman, is that correct? A. I can't—the correct answer is I can't recollect any such conversation between myself and Morton Goldman or Teddy Goldman.

Q. Now reading from Exhibit 21-A in evidence, do you remember, Mr. Schulman, after Mr. Hoffman had spoken, when you said: "All your conscientiousness won't help you anything."

Mr. Fielding: What page is that on?

Mr. Walsh: That is on page 1. 1783

Q. Is that true and did you say that? A. I don't remember ever having made any such statement.

Q. Well, do you deny that you made it? A. If I don't remember it I can't admit it.

Q. Well, I did not ask you if you admitted it. I asked you if you deny making it. A. I would deny making it.

Q. All right. You deny that? A. Yes, unless you should tell me in the light or in the context of other conversation it may have been mentioned in it.

Q. I am sure that Mr. Fielding will be glad to accomodate you there. A. He can't create context— 1784

Mr. Fielding: I move to strike that out.

The Court: I will sustain the objection.

Mr. Walsh: That is proper, that he can take him on redirect.

The Court: I know, but you needn't make any side remarks about what Mr. Fielding will do. Make the objection and I will sustain it.

Mr. Walsh: Well, I apologize if I overstepped the bounds of propriety.

The Court: I sustain the objection to exclude the remark of the District Attorney that "Mr. Fielding will take care of it.". 1785

Mr. Walsh: I assumed that he would take care of it on redirect.

The Court: Very well, you may proceed.

Mr. Fielding: I will take care of my own case.

The Court: Proceed.

Q. Do you remember who said this, at the meeting of April the 7th, 1937:

"The auctioneer charges 10 per cent"—

Mr. Fielding: What page?

Mr. Walsh: Page 1 yet.

786 Q. —"but the other five didn't go to you personally. Will Endicott-Johnson give you any" and then something was missed, and then I am going to skip something—"it's a practical proposition. You're a crook so long as you don't give money, whether it's 90 per cent or 20 per cent."

Do you remember having said that or do you remember having heard Mr. Hoffman say that?

Mr. Fielding: Now at this time I object to the question because it isn't a proper reference of 21-A, if I am reading on the right page, page 1. It starts off with:

787 "Hoffman: The auctioneer charges 10 per cent."

Mr. Walsh: And if my memory serves me correctly, I asked him if he remembers whether or not Hoffman or he said that.

Mr. Fielding: You asked him if he said that.

Mr. Walsh: Or Hoffman.

The Court: Well, I will sustain the objection to the form of the question in view of the fact that it is not clear, so you can re-ask your question.

Q. Do you remember Hoffman saying this or did you say it: "it's a practical proposition. You're a crook so long
788 as you don't give money, whether it's 90 per cent or 20 per cent."

Do you remember anything said about that? A. I wouldn't attribute that statement to myself or to Mr. Hoffman.

Q. You would to Mr. Hoffman? A. I would not, I said.

Q. And you never said it? A. No.

Q. And was there any conversation to that effect, that unless the creditors got 100 per cent, why, "you're a crook so long as you don't give money, whether it's 90 per cent or 20 per cent."

Did you have any discussion about that, concerning that

with Hoffman? A. There may have been, but I can't recall every conversation. 1789

Q. Do you deny having such a conversation? A. I can't admit and I can't deny.

Q. You have no such present recollection? A. No.

Q. But you do admit reading this over? A. Yes.

Q. And you tried to recall, to remember that? A. I taxed my brains as hard as I could. Maybe they are not good enough.

Q. Do you remember whether or not in the conversation on April the 7th you said this—

Mr. Walsh: I am now reading from page 2, Mr. Fielding. 1790

Q. (Continuing) "Not only that, the man still has debts of five hundred or one thousand against him. He will never get a loan"—something was missed—"I know my end of it. I'll tell you why I know a little bit better than you."

Do you remember having said that? A. Yes, some vague recollection about that.

Q. What did you mean when you said, "I know my end of it"? A. Well, I know my end—

Q. "of it"? A. A sutuation—

Q. Quote—what do you mean by that? A. Will you let me explain? 1791

Q. Yes, surely. A. I know my end of the situation, that if a man was in business and then he goes out of business and he leaves unpaid debts, if he wants to re-establish himself in business, if he wants to go to the Morris Plan, to the National City Bank or to any one of these lending institutions, that he would have very great difficulty in getting a loan, in view of the fact that there are unpaid obligations, and I will tell you why I know it: From time to time these institutions or their attorneys called me up and asked me, "Mr. Schulman, is the judgment that you

1792 obtained in favor of X against Y, is it paid, and we are asking this in connection with a loan that we are about to make," and if my answer, let us say, is unsatisfactory, that the claim has not been paid, then the borrower may experience difficulty in getting a loan. That explains that.

Q. So in other words, you're a crook if you pay 90 or 20 per cent; you have to pay $100? A. I didn't say anything of that kind.

Q. Does that refresh your recollection, perhaps, that you may have said? A. Not at all.

Q. Now the next— A. And as a matter of fact, the minutes so attribute that statement to Hoffman; not to
1793 me.

Q. I know that. A. All right.

Q. I asked you— A. You are trying to create the impression that it is attributed to me.

Q. I am not trying to create any impression, Mr. Schulman. A. All right, I am sorry.

Q. And the next thing is this: "Hoffman: Did you see Goldman the other day, did you speak with him?

"Schulman: For an hour and 20 minutes."

Do you remember that? A. Are there any dashes after that "hour and 20 minutes"?

1794

Q. No, there is a period there. A. What follows after the "hour and 20 minutes"?

Q. Then there are some dashes about it—

Mr. Fielding: No.

Q. "Hoffman: You didn't speak to him at all about it?

"Schulman:" —and then you didn't say anything else:

Mr. Fielding: He said something but they didn't get it.

Q. They didn't get it. 179

Mr. Fielding: All right.

Q. Did you or did you not say that, or does that refresh your recollection? A. Say what, dashes?

Q. That you spoke to Goldman for an hour and 20 minutes. A. I denied that before, Mr. Walsh.

Q. You did call Mr. Goldman up to come over there? A. Oh yes.

Q. And he subsequently did appear at the office? A. Exactly.

Q. And that was Morton Goldman, is that correct? A. That's right; April 7th you are talking about? 179

Q. April 7th. A. Yes, yes.

Q. And was Mr. Kandell supposed to appear at that time, too? A. Not that I know of. I wouldn't call him.

Q. Well, did Mr. Morton Goldman want to be the boss in this particular involuntary petition in bankruptcy? A. I wouldn't say that he wanted to be the boss. I looked up to him.

Q. He knew the mechanics of it, as you said, is that correct? A. I looked up to him as a more experienced lawyer in these matters than I was and if he took the helm of the ship I was perfectly satisfied.

Q. Do you remember on direct examination you were 179 asked this question: "What you did"—and you—"were going to take care of the petitioning creditors; Morton Goldman was going to work out the mechanics of it."

Do you remember testifying on direct to that question and giving that answer? A. No—this morning you mean?

Q. Yes. A. No, I don't remember that.

Q. You don't remember? A. No.

Q. Well, is this correct, and was this said by yourself: "If you hadn't come up"—

Mr. Fielding: What page?

1798 Mr. Walsh: Page 3.

Q. (Continuing) And then there are some dashes—"you know"—and this is what I am specifically calling your attention to—"this Marty Goldman is smarter than his brother Teddy Goldman."

Q. Is that correct? Did you say that? A. That was always my impression, and I may have said it.

Q. I mean so far as we are concerned now, we agree that you may have said this particular thing on April the 7th at this hearing, isn't that right? A. That's correct. It's quite possible that I did.

1799 Q. Then Hoffman said this: "You know this fellow Teddy Goldman was up my office twice. This Martin Goldman looks to be a sharp guy."

Do you remember Mr. Hoffman saying that? A. I could only answer you in this fashion: There were uncomplimentary remarks passed between—that is, one about the other, with respect to Hoffman and Goldman, Morton Goldman, yes, and if that's in there it may have been there—it may have been said.

Q. Well, do you remember saying this—you:

"Schulman: They see a damn case and they won't let go no matter how the creditors will benefit by it."

1800

A. I would attribute that to—

Q. (Continuing) "Some individuals can't see them get the benefit." A. I would attribute a remark like that to Mr. Hoffman. I don't think I said that.

Q. Well, was it said? A. It may have been.

Q. It may or may not have been; do you remember? A. Part of the uncomplimentary nature of the discussion about—relative to Martin Goldman and Hoffman.

Q. You did not say anything like that? A. I don't think so, no.

Q. Well, Hoffman never had any experience with the Goldmans before, but you did. You have been associated with other bankruptcies, haven't you? 1801

Mr. Fielding: I move—I object to the question.

The Court: He is asking him a question. He may press him.

A. I never had any unpleasant experiences with Goldman.

Q. Well, did you say that: "They see a damn case and they won't let go no matter how the creditors will benefit by it." A. I think that was Mr. Hoffman's, all right.

Q. "Some individuals can't see them get the benefit"? 1802
A. I think that is Mr. Hoffman's ideas and his work.

Q. Was that said on that occasion? A. It may have been.

Q. So far as the second thing, we agree that may have been said on that question? A. That is the second thing I said may have been said on that occasion?

Q. Well, do you remember whether it was said or wasn't said? A. General, uncomplimentary remarks. If you think that I am going to remember them in 1940, what was said in 1937, when it is trivial and nonsensical to me, I don't go to sleep with that kind of nonsense.

Q. You don't think this is nonsensical, what you said on 1803
these occasions? A. Some of it might have been. Some of it might have been—again, a lot of it might have been nonsensical.

Q. Well, I will confine my questions to what I think is not nonsensical. A. Right.

Mr. Fielding: I move to strike that out, the question.

The Court: Yes, I will sustain the motion.

Q. Do you remember—

Mr. Walsh: On page 3.

1804 Q. (Continuing) That after Hoffman said, "I could check and make sure, darn sure that they wouldn't do any guzzling. How do you fellows know how?" And then it says:

"Schulman: After you know the tricks you know how it works. They can't pull any tricks on me."

Do you remember having made that statement? A. I think so, yes.

Mr. Fielding: Pardon me?

Q. What is your answer?

1805 Mr. Fielding: May I ask that the question include the statement which immediately follows. That will make some sense out of it.

Mr. Walsh: I read that.

Mr. Fielding: No, the next one, that you did not read.

Mr. Walsh: What Hoffman said—do you want me to read it now?

Mr. Fielding: Yes. "I know better."

Mr. Walsh: Oh, sure.

Mr. Fielding: Then it is understandable.

Q. "I know better. In this case there was 360 lots and 1806 it has to be a bid on each lot, and down at the sale I keep checking all the bids for each lot," dashes, "suppose they tell you here?"

Mr. Walsh: Is that it?

Mr. Fielding: Yes.

Q. Now at this time you were speaking how auctioneers could do certain things, is that correct? A. Hoffman raised—Hoffman raised and I—those words attributable to me, I think are probably attributable to me.

Q. That you know the tricks about the auctioneers? A. I know some of them.

Q. From your experience? A. Yes. 1807

Q. And unless you do watch the auctioneers they may throw a couple of lots in and sell them on you, is that correct? A. No.

Q. Or I will withdraw that. Do you have to watch auctioneers quite closely? A. It all depends who.

Q. Well, I will say auctioneers generally? A. No, I wouldn't say that about a business or profession; no.

Q. But it is well for very person to be right there and see that each individual lot is sold, is that correct? A. Well, sold probably, yes. That's good business; that's good sense.

Q. I think so. "After you know the tricks you know how it works. They can't pull any tricks on me." A. That is right. 1808

Q. What tricks could they pull on you? A. Let me give you an illustration—

Q. I would like it. A. Expressly, an auctioneer may if he sees friends of his among the buyers, will knock down a piece of merchandise quickly without giving the rest of the buyers an opportunity to bid.

Q. Yes? A. The ultimate result of things of that kind is that the total realized from that sale is less than what it should have brought. That's one of them. Sometimes an auctioneer puts in, let us say, 13 shirts or 15 shirts and he marks his lot that there are 12 shirts there, and then if he does a thing of that kind, then of course he sells more merchandise than—he gets a smaller price than what he should get. Those one or two of the things. 1809

Q. Do you know many more tricks? A. Not very many more.

Q. Well, tell me more. A. I don't think I can, I am sorry.

Q. Well, tell us a couple more. A. I don't think so. I don't know any more.

1810 The Court: Very well, gentlemen. We will take a recess at this point until 2:15.

Mr. Corbin: Will your Honor direct the witness Rich to return after recess?

The Court: Yes. The witness Rich will report back here at 2:15 and remain until you are excused by counsel for the defendants because if you absent yourself and should be called—where is Rich? Is Rich in the corridor?

(No response.)

A Voice: He just stepped outside.

1811 The Court: Well, it won't be necessary. Some of you tell him that if he absents himself again and he is not here when he is called he will be punished or he will at least be subject to punishment.

Mr. Corbin: Here he is.

The Court: Very well.

(To Mr. Rich) You be back here at 2:15 and remain until you are excused by the parties who examine you. Otherwise you might get into trouble.

(Recess to 2:15 P. M.)

AFTERNOON SESSION.

1812 JACOB P. SCHULMAN, resumed the stand.

Cross examination continued by Mr. Walsh:

Q. Do you remember reading over Bodinger's notes, Mr. Schulman, at the bottom of page 4:

"Schulman: As I told you before, the only thing I'll tell you. They are making money quicker. Ordinarily, the money he was getting, only ultimately this guy"—then there is same hiatus, something left out—"I'm convinced that the guy honestly means that the brothers were going to get, as he told me

last time he had some kind"—and something left out—"he told me not to be such a"—something else left out—"I told him over here, whether you like the setup or you don't like the setup, he shouldn't hog the whole picture himself." 1813

Do you remember such words to that effect being said on April 7th? A. No, sir.

Q. Do you remember who the brothers were that were mentioned by yourself in this particular conversation? A. No, sir.

Q. And at the office of Goldman brothers? A. I don't think so. 1814

Q. "In view of the fact he should not hog the whole picture himself." A. Might have been talking about an entirely different case.

Q. You were there. I was not there. I would like to get the picture. A. Frankly, it is an incomplete context you have given me.

Q. I only want to give you an opportunity to explain what these uncompleted sentences are.

Mr. Fielding: I move to strike that out.
The Court: I overrule the motion.
Mr. Fielding: Exception. 1815

A. I cannot make any sense out of that portion which you read.

Q. Let me read this one portion, once more, "he shouldn't hog the whole picture himself." Do you remember words to that effect being said? A. No, sir.

Q. Would it refresh your recollection, if you said that before Judge Coxe on April 5th, that you were not interested in the domination of Morton Goldman in this picture and let Hoffman and Goldman straighten this thing out themselves, would that refresh your recollection, so you could explain whom you meant when you said "he shouldn't

1816 hog the whole picture himself"? A. Judge Coxe didn't say that Goldman and Hoffman should straighten out this affair.

Q. I don't think I did say that. A. I thought you did.

Q. When you were before Judge Coxe you told Judge Coxe that you were not interested in the personal disputes between Goldman and Hoffman? A. That is right.

Q. You were not interested in whether Goldman was trying to dominate the picture? A. I didn't say that.

Q. This is your testimony on direct examination this morning, Mr. Schulman, it is on page 558 of the record. You were asked preliminarily the question, "What happened
1817 before Judge Coxe?" and then you make that statement and you say here, "I said to Judge Coxe the following: I said, 'I am not interested in anybody's attempted domination of the case at the creditors' meeting or otherwise, and I am not interested in any personal disputes between Hoffman and Morton Goldman.' I said, 'But what I am interested in is that creditors' wishes should be respected so far as they may be properly respected,' and I said to Judge Coxe this: 'So far as the additional expense of advertising'"—do you remember testifying to that this morning? A. That is right.

Q. Does that refresh your recollection as to whom you
1818 meant by "hogging the whole picture"? A. It may not have had the slightest connection between one and the other.

Q. Where did you get the impression when you said before Judge Coxe that Morton Goldman was trying to dominate the case at the creditors' meeting and otherwise, and that you were not interested in the personal disputes between Hoffman and Goldman? A. From what Mr. Hoffman had told Judge Coxe, it transpired at the creditors' meeting.

Q. Now do you remember, Mr. Schulman, you were in

court when Mr. Hoffman was being examined by Mr. 1819
Corbin—this appears on page 205 of the record:

"Q. Now will you tell us what you said to Judge Coxe of this court on that occasion with reference I mean, of course, to Morton Goldman's conversation? A. I told him in substance that we had had this meeting over at the Dry Goods Association, that Morton Goldman of the firm of Goldman, Malter & Goldman had made a proposition to me in the presence of Mr. Wishbow to the effect that he wanted to get a private buyer for the stock in question." Do you remember Mr. Hoffman saying that before Judge Coxe that day? A. Not at all.

1820

Mr. Fielding: I object to it.

Mr. Walsh: I will come to that.

The Court: What is the question?

Mr. Corbin: I don't think he ought to use words that we cannot understand.

Mr. Walsh: That is the reason I explained it to you, Mr. Corbin.

Mr. Corbin: The question called for an explanation. I would have to be an interpreter to follow that.

The Court: Well, I think I understand it. I will overrule the objection. The question was does 1821
he remember Hoffman having said that to Judge Coxe.

Q. Do you remember that? A. I remember distinctly that Mr. Hoffman—

Q. I ask you do you remember what I just read to you? A. I am trying to answer your question.

Q. Well, if you will say yes or no, then you may give any explanation you want. A. My answer is Mr. Hoffman made no such statement, and I need to make no explanation.

Q. In other words, you don't remember Mr. Hoffman

1822 saying this before Judge Coxe? A. Definitely you are wrong there.

Q. Did he make such a statement before Judge Coxe? A. Definitely no.

Q. In other words, your memory is that you are quite sure that he didn't say this at this time? A. Exactly, neither did Mr. Wishbow.

Q. Did he say anything to this effect, did he say this, "and that they wanted to split a certain amount of money which they would get from this private buyer"? Do you remember him saying that before Judge Coxe? A. I remember that he didn't say so.

1823 Q. "And the split would be amongst Goldman, Kandell and myself and the auctioneer, and the like." Do you remember him saying that before Judge Coxe? A. I remember he didn't say so.

Q. "I also told him that they had tried to—they told me they were going to try to arrange for a settlement of 40 per cent for creditors." Do you remember Mr. Hoffman saying that before Judge Coxe? A. No, sir.

Q. He didn't say anything about any settlement of 40 per cent before Judge Coxe? A. No, sir.

Q. "And that the difference between the amount that would be required to straighten out that 40 per cent
1824 settlement plus some additional moneys for administration fees, and the amount that they would actually get from this private buyer would be split amongst these parties and that the true amount of the sale would not be disclosed to the creditors." Do you remember Mr. Hoffman saying that before Judge Coxe? A. No such statement made by Mr. Hoffman on April 5, 1937.

Q. Now what did Hoffman say before Judge Coxe?

Mr. Fielding: I object to that on the ground that he has gone over it four or five times, it is repetitious.

Jacob P. Schulman—for Defendants—Cross.

The Court: I will overrule the objection. On cross-examination the attorney is allowed quite a wide latitude. I will let him ask it. I overrule the objection. 1825

Mr. Fielding: Exception.

A. Mr. Hoffman began his argument on his application before Judge Coxe in the following manner: He said he was the attorney for the assignee, that the assignee had completed lotting, he had advertised the sale scheduled for that morning for 10:30, that there were buyers at the place, and he wanted leave of the Court to proceed with the assignee's sale, and that if the sale was adjourned or stayed, creditors would suffer because there would be additional expenses involved. 1826

And then he further said that in this matter no bankruptcy petition would have been filed were it not for the fact that Morton Goldman tried to dominate the proceedings at the creditors' meeting, which he had opposed, and then I answered those arguments before Judge Coxe.

Q. What did you say, again? A. I said to Judge Coxe, "So far as the expense is concerned, there is not or won't be any additional expense to talk about, because the official auctioneer of this company, of the Underwriters Salvage Company, and the official auctioneer, as I understand, of this Court—where they come in and sell assets which have been covered by an assignment for the benefit of creditors before, and where the assignor's auctioneer had done some work in lotting and preparting for sale, that even though the Underwriters Salvage Company may duplicate that work, there won't be and there is not any duplication of expenses for the same item." So I said, "That disposes of the argument so far as the expenses are concerned." 1827

Now with respect to any particular argument that he may have had or any disputes he may have had with

1828 Morton Goldman, with reference to the domination of the case one way or the other, I told the Court I had no interest in the matter but only in the interest of the Court.

Q. In other words, you told the Court you had absolutely no interest in the dispute between Goldman and Hoffman, is that what you said? A. Sure, I said it.

Q. And that is what you told Judge Coxe? A. Exactly. And I also told Judge Coxe that Hoffman apparently on the surface had agreed to permit creditors to examine the stock and effectuate a settlement on the basis that creditors would be permitted thereby to make appraisals and bids, so that they should get a
1829 quick settlement, and he ostensibly agreed to that, and when it came time to accomplish or cooperate to that end with the creditors, we could not get him on the telephone, that he would not telephone back, and that under such circumstances the bankruptcy was forced upon the creditors. And I told Judge Coxe further that the creditors' wishes were that the assignment be vacated, that the bankruptcy trustee be vacated, and that the creditors get a real honest opportunity to make a settlement on the basis of which I just outlined and if that could be accomplished, that would be fine.

On the other hand, if Mr. Hoffman continued to be
1830 obstreperous and would not cooperate to that end, then we would have to go through the regular routine of bankruptcy.

Q. As a matter of fact, if Mr. Hoffman had cooperated with you, you would never have filed a petition in bankruptcy? A. The creditors believed that there was a lack of cooperation.

Q. You were going to have a sale on the 5th and the creditors would have gotten everything they were entitled to on the sale on the 5th. How were you going to save creditors by throwing them in bankruptcy and getting additional expenses? A. May I answer that?

Q. That is the question. A. Fine. Hoffman wanted and 1831
insisted on going through with the assignment of sale which meant incurring a disproportionate amount of administration expenses, that is always experienced in assignment proceedings, and ultimately the creditors wind up with 10 or 15 per cent, if they get that. On the other hand, the creditors didn't want that procedure or plan to go through. They wanted to eliminate as much as possible overhead or all administration expenses as much as they could, and their plan was, and that was their instructions to me and that was their request of Hoffman, not to go through with the assignment proceeding but, rather, to sell it for the best price— 1832

Q. Instead of assignment, you mean the bankruptcy proceedings—

Mr. Fielding: Let him go ahead and finish the answer.

A. (Continuing) So instead of employing assignment proceedings, it meant incurring a disproportionate expense. For instance, like this $1700 of gross receipts, in order to distribute to the creditors or thereabouts round figures, they wanted another plan to be employed.

Q. Who did? A. The creditors did at the meeting. They 1833
wanted the stock to be sold to the highest bidder.

Q. And the stock would have been sold to the highest bidder on April 5th? A. Yes, sir. You have 10 per cent auctioneers' expenses, you have labor and advertising, which you don't have under the creditors' plan; you don't have $300 for an attorney for the assignee and you don't have $80 for assignee's commissions, and you don't have $300 for City Sales Tax when you have a private sale. What the creditors wanted was a plan that would eliminate all that, except the fee of the attorney representing the debtor, and it was always understood that they would

1834 like to effectuate a private settlement, within a reasonable fee allocating or allotting to him that—.

Q. In other words, you would eliminate the auctioneer's expense and the lotting, and you had $60 in mind, and eliminate a lot of other things in commissions, in that plan, without all these expenses, rather, to eliminate those expenses that found their way in and to obtain a greater dividend for the creditors? A. That was the difference between the creditors' wishes and Hoffman's wishes.

Q. Well, Hoffman had already incurred an expense of $88 with an auctioneer for lotting and making an appraisal on it? A. If he did, fine.

1835 Q. You knew that? A. I didn't know that.

Q. You had to pay $35 even to file a petition in bankruptcy? A. Right, assuming I was the attorney.

Q. Let us not assume anything. Now may I ask you another question? A. I would like to answer this one first.

Q. All right. A. You already had incurred lotting and advertising expenses so far as the particular auctioneer was concerned, and you didn't have to incur the expenses of advertising again, if you only adhered to the creditors' wishes. You didn't have to employ all these men to complete their lotting if you had adhered to the creditors' wishes.

1836 On the other hand assuming, let us say, that all this lotting had been done and the expenses had been paid, if you had stopped at that point, the auctioneer's expenses would only remain at $88 instead of $350 as they were ultimately, or to make myself plainer, Mr. Walsh—

Q. Thank you. A. (Continuing)—an auctioneer in an assignment proceeding generally gets 10 per cent of the results from his auction sale. Let us say the amount was $1500, then he gets $150 of it. Now if you adopted the plan that the creditors wanted, that $150 would never have been incurred, and so on down the line.

Q. Are you finished? A. Are you satisfied with the completeness of my answer? 1837

Q. Are you satisfied? A. I am.

Q. As a matter of fact, the different expenses had been already incurred when you filed the petition on April 3rd? A. Yes, sir, but it should not have been.

Q. It already had been. You step in with bankruptcy, and you are going to save the creditors money so you throw 35 bucks on their backs—

Mr. Fielding: I don't understand what "30 bucks are."

Mr. Walsh: I will make myself clearer. I meant $35. 1838

A. No. Your question, Mr. Walsh, needs this answer—

Q. I don't want "needs this answer." What is your answer? A. I am trying to give it to you.

Q. Thank you. A. The creditors felt that Hoffman had repudiated and failed to keep his understanding and agreement with them to effectuate a private settlement where they would have gotten 40 to 50 per cent more on the dollar than they did. They wanted those assets to be handled in the regular Bankruptcy Court. On other hand, if he would rather consider himself and say to the creditors, "All right, I will now adhere to your plan, we will vacate the bankruptcy," there would be just the $35 left, so it is only $15 expenses, and we will eliminate assignment proceedings, so we don't have any further expenses, and then yield the creditors as much as the picture warrants. 1839

Q. All of these expenses had been incurred before you stepped into the picture, the advertising and the lotting and the rent up to and including April 3rd; is that the fact? A. No.

Q. They were fixed charges, were they not, the ad-

1840 vertising, they had advertised in the papers; the assignee would have to pay that, wouldn't he? A. Yes, sir, the assignee would have to pay it. He would also have to pay the rent up to and including April 5th, yes, sir.

Q. And he also would have had to pay the disbursements of the auctioneer? A. Just the disbursements, the expenses and labor charges.

Q. In other words, he had incurred that right up to there? A. I don't think I am making myself quite clear.

Q. Wait a minute. I am asking you a couple of questions. So you told Hoffman you wanted a private sale? A. I didn't tell him any such thing. The creditors told him.

1841 Q. And everything you told this Court and the jury today, the creditors told you that? A. Exactly. Everything they told me.

Q. What you have just told us? A. What I have testified the creditors told me, that is correct, but there is one point in your question about labor charges and advertising that I would like to clear up.

Q. Go ahead. A. If you are going to have a sale on April 5, 1937, you generally insert an advertisement a day or two before. If Hoffman had adhered to the creditors' wishes on March 25, 1937, he would not have incurred the expense for advertising.

1842 Further, if he had adhered to the creditors' wishes on March 25, he would have stopped whatever labor charges that were incurred after that, so that the creditors should be satisfied, but if they had been incurred they had to be paid. That I agree with you on.

Q. I don't want you to agree with me. A. But I am agreeing.

Mr. Fielding: I move to strike that part out.

The Court: Yes. Motion sustained to strike that out.

Q. When you put Hymowitz's estate into bankruptcy did you know at that time that his mother and sister had claims of $1900 against the estate? A. Some of the creditors told me that some mention had been made of $1200. I think it was all personal loans. 1843

Q. That is a valid claim, if they can prove it? A. But there were no books or records displayed.

Q. Didn't you know that on April 3rd? A. Yes, sir.

Q. Who told you that? A. Mr. Schwartz. There were no books or records that the man had that were furnished to the creditors.

Q. Did you tell the Goldmans there were no books? A. They knew themselves. 1844

Q. Who told them? A. One was present at the meeting.

Q. Who? A. Morton Goldman.

Q. Did you discuss with Morton Goldman anything prior to the time you filed the petition in bankruptcy? A. I told you what I discussed.

Q. I asked you whether or not you spoke with Morton Goldman or who was present at the meeting. A. No.

Q. You did not? A. No.

Q. In the event that these claims of the mother and sister of Hymowitz were allowed, then the creditors would have gotten $1900, less their proportionate share. In other words, the $1900 would have gone in as a general claim, is that correct? A. If a claim is allowed in bankruptcy, it is allowable, and everyone gets a dividend. I say on that I agree with you. 1845

Q. And consequently in bankruptcy, with the amount of money that the mother of Hymowitz claimed, plus the amount his sister claimed, that would also go in as a general claim against the estate; is that correct? A. May I answer it?

Q. Is that correct? A. It is not correct.

1846 Q. What is correct? A. Nine out of ten times—

Q. I want this case. That is all we are interested in. A. In this particular case I have no knowledge as to the lack of validity or validity of the personal loans.

Q. I understand that as of April 3, 1937, when you filed this, you had heard that there were claims outstanding against the estate of $1900, is that correct? A. No.

Q. How much? A. I heard that claims were being asserted or were in existence in favor of the family which we generally discount 100 per cent.

Q. Did you hear that there were claims being asserted by the family in the amount of $1200? I will take your
1847 figure. A. It is not a question of the figure.

Q. How much did Schwartz tell you was the amount of the asserted claims? A. That there were in existence personal loans of $1200. I did not take those claims seriously.

Q. Because of your experience in the bankruptcy field? A. No, sir.

Q. Whether you took them seriously or not on April 3rd, you knew if substantiated or proved, they would go in as a general claim against the estate; is that true? A. Certainly.

Q. And consequently wipe out part of the profit or dividend for the creditors? A. The dividend would be so much
1848 less.

Q. Substantially less? A. So much less.

Q. And yet you still filed the petition in bankruptcy? A. And I will tell you why, if you want to know the reason. Q. I want to give you every opportunity that you want. A. May I give the reason?

Q. Surely. Go on and give it to us. A. A lot of lawyers when they call creditors' meetings—

Q. Can you confine yourself, however, to this case? A. Yes, sir. It has an application to this case. You find many times a debtor or an attorney asserts personal loans for

which there is no foundation in fact or truth. There is 184
no check in evidence. There is no bankbook in evidence shown to them for the purpose of having more or less coercion of the creditors to do as the debtor or the debtor's attorneys want them to do. We find from general experience—

Q. Who do you mean when you say "we"? A. I do; others do.

Q. Does Goldman do that? A. I don't know what he does. We find from general experience when we come to the Bankruptcy Court they file claims whether legitimate or not, but the trustee has a right to question them and 185
then expunge them. So if there is no evidence to substantiate a claim, it is the easiest thing to assert one between a mother and daughter—they are generally expunged, if filed at all. On the other hand, where personal loans do exist honestly and legitimately, I don't see why they are not entitled to the same proportionate share as the creditors' claims themselves.

Q. I don't either.

Mr. Fielding: I move to strike out that remark.

The Court: Yes. Motion sustained.

Q. Are you finished with your answer? A. I am. 185

Q. Now when did you first come to the conclusion that Mr. Morton Goldman was angry and unfriendly with Mr. Hoffman?

Mr. Fielding: I object to the question. I think that is the tenth time that has been asked.

The Court: Yes, objection sustained. That has been referred to before on cross examination.

Q. Do you remember at this meeting on April 7th that you had your secretary call Mr. Goldman up? A. I generally called my own numbers in those days.

1852 Q. Did you call Mr. Goldman up on that occasion? A. I must have.

Q. And what did you say to him over the telephone? A. I asked him to come over because Judge Coxe asked Mr. Hoffman and myself to try to adjust this matter.

Q. This is two days after, isn't it? A. That is right.

Q. Why didn't you call up on April 5th, right after the hearing before Judge Coxe? A. It was likely—

Q. Did you call him up on April 5th after Judge Coxe asked you straighten it out? A. No.

Q. So you waited until Hoffman was there at five o'clock, two days after? A. Hoffman said that he could not remain,
1853 that he wanted to make an appointment for another day. I was ready.

Q. In the interim you didn't tell Mr. Morton Goldman that Judge Coxe wanted you to straighten it out? A. No.

Q. So this was the first time, when you called him up on the telephone on April 7th after the hearing before Judge Coxe, that is the first time you say you spoke to Morton Goldman? A. That is the first time I remember speaking to Morton Goldman.

Q. Has anything that I said refreshed your recollection? A. No.

1854 Q. What did you say? A. I asked him to call, to come over to the office. He said, "I don't want to be bothered with the matter. I am through with it." I said, "Please come over because Judge Coxe recommended that this matter be settled and if we are going to do anything to settle this matter we want you to come over, and you are the attorney for a large creditor and I have creditors myself, so please come over."

Q. Is that all you said? A. Practically.

Q. Is there anything else you can remember at this time that was said to him? A. No, sir.

Q. Did Mr. Goldman seem angry over the telephone when you said that to him? A. Not to me, no.

Q. Then Mr. Goldman subsequently did appear at your office, is that correct? A. Yes, sir, that is right. 1855

Q. Now on page 5, do you remember that Mr. Bodinger said he took down this language, when he was hearing over this microphone and this crystal microphone, just prior to that time Mr. Goldman did certain things that are left out—"never made a deal with him in my life and"—other things that were left out—"(At this point all the parties started arguing and speaking at once.)" And Hoffman said, "You know goddam well whatever I told the judge was true."

Do you remember that being said in your office? A. All of that which you read?

Q. I ask you this question: Do you remember whether or not Hoffman said to Goldman, Goldman was present at this time, "You know goddam well whatever I told the judge was true." 1856

Do you remember that? A. Some such statement.

Q. Did he say that in your office? A. Yes, sir.

Q. And was Goldman there at that time? A. Yes, sir.

Q. Goldman said, "I know damn well it wasn't the truth."

Do you remember him saying that? A. Something like that.

Q. Do you remember where Mr. Goldman got that information? He was not there before Judge Coxe? A. No.

Q. You didn't tell him? A. No. 1857

Q. Was Levy there that day before Judge Coxe? A. No, sir.

Q. That is his client? A. That is his client. Levy was not there.

Q. Did Morton Goldman ever tell you where he found out what Mr. Hoffman told Judge Coxe? A. It may be that I said to him when he came in that Hoffman said to the judge, "You tried to dominate the case one way or the other." A third party seems to be speaking and could not be definitely identified.

1858 Q. Was this the time you all had an argument as soon as Goldman came in? A. No, frankly not.

Q. At this point it says, "All the parties started arguing and speaking at once," and Hoffman said what I just said. "You know whatever I told the judge was true." A. There was no mention made at that time of Hoffman telling the truth of any deal.

Q. What conversation did you have with Goldman just prior to the time Hoffman said, "You know whatever I told the judge was true"? A. I might have said, and I very likely did so and I am giving you my best recollection—

Q. That is all we can expect at this time. A. (Continuing)
1859 —that Hoffman said something about, "You tried to dominate the case. Otherwise there would be no bankruptcy." Morton Goldman, of course, resented it.

Q. Who did? A. Morton Goldman.

Q. Is that the point where Goldman became angry and unfriendly to Hoffman? A. No. Mr. Morton Goldman was angry from the moment he stepped in my office, not angry with me but Hoffman.

Q. You didn't know why Goldman was angry with Hoffman at that time? A. I could understand.

Q. Why? A. He was supposed to cooperate with the creditors by having the door kept open, by securing appraisers and buyers and accepting the bids and working
1860 to a settlement that he apparently committed himself to or agreed to at the meeting, and then Hoffman ran out of the proposition, and that might have caused some resentment in Goldman's breast.

Q. But, rather, that he didn't allow the creditors to go down there, is that what you think? A. No mention at that time by Hoffman before Judge Coxe or before this trial that Hoffman said Morton Goldman made some kind of a secret or fraudulent deal one way or the other. That is news to me.

Q. Since the newspaper notices appeared? A. No, sir, since Hoffman testified in this court. 1861

Q. Well, then you were present there and Hoffman said you were there. You heard him tell Judge Coxe during that 45 minutes? A. Not there 45 minutes.

Q. How long were you there? A. At best 15 or 20 minutes.

Q. You can say an awful lot in 15 or 20 minutes? A. Depending on what you say.

Mr. Fielding: I move to strike that out question.

The Court: Yes. Motion sustained.

1862

Q. On direct examination you said you acted more or less as a peacemaker? A. I tried to be.

Q. Do you remember this statement of Hoffman's, page 6: "Yes. I figured to give them 80 per cent. You get enough money and"—something missed—"I offered to Schulman to see that everything was right." And then you said, "I wouldn't let him act. I wouldn't let anybody act." A. I said I would not let him act?

Q. That is what is here. A. No such conversation. As a matter of fact, Hoffman never made a definite offer to the creditors of 80 per cent.

Q. Do you remember: Hoffman: In the first place, you asked me to come down and speak to you. Now you have brought Mr. Goldman over here, and now he starts something." 1863

Do you remember that? A. Something of that kind. In other words, he was not pleased with the continuous bickering and arguments between Goldman and himself.

Q. Were you acting as a peacemaker between Goldman and Hoffman? A. I tried to calm both of them, if that is what you call being a peacemaker. Yes, sir, I would say so.

Q. Why did you?

1864 Mr. Fielding: I object to that on the ground that it is so irrelevant, your Honor.

The Court: Objection sustained.

Q. Mr. Schulman, was the reason you tried to calm them so you would be able to work out the arrangement whereby having two funds, one of which was to be divided among you, Goldman, Hoffman and the auctioneer, was that the reason you tried to calm them? A. There was never such a reason in my mind.

Q. You never said that is what I am trying to find out. A. The very papers you are reading from don't say that.

1865 Q. I am asking you a question. A. No, sir.

Q. Do you remember Mr. Goldman saying this, page 6: "But the assignment would be put out on commission, and Kandell would get paid and the auctioneer would get paid." Do you remember anything to that effect? A. Yes, sir.

Q. What was that about? A. I will tell you why Goldman said, among other things, to Hoffman, "If you had a definite appraisal as to the value of the assets, get it guaranteed. Otherwise all you have is a regular assignee's sale with the auctioneer getting commissions, and whether it brings in a greater or a lesser amount, you have to take it and be satisfied with it, and that is no way to run a sale.

1866 Q. Goldman was calming down? A. I don't know.

Q. You were there? A. I was not.

Q. Wasn't he still angry and unfriendly with Hoffman? A. I didn't examine his feelings.

Q. But by looking at the individuals you could tell, couldn't you? A. I imagine they had somewhat subsided.

Q. "Subsided" is a relative term.

Mr. Fielding: I move to strike that out.

The Court: Yes. The jury will disregard any remarks by the Government counsel unless in the form of a question. Of course when I sustain a

motion to exclude a remark, that indicates the jury should 1867
disregard that also.

Q. Do you remember this, page 7. Hoffman is supposed to have said or at least this is what Bodinger said he said: "You don't know how much you could get? You told me you could force a settlement of 40 per cent through Kandell's help with the Association, and that that 40 per cent would represent around $1000 because there is about $2500 liabilities, and that the balance would be divided up."

Do you remember anything to that effect being said? A. There was some talk about that.

Q. What I just read to you? A. Yes, sir.

Q. "Kandell would have to be considered; you'd have 1868
to be considered"— A. Who is that?

Q. —"you'd have to be considered"—Hoffman said this— A. To who?

Q. Well, to either you or Goldman. You were there. I wasn't. A. All right.

Q. You can tell us who he meant.

Mr. Fielding: I think we can concede by this time that the District Attorney was not present.

The Court: Very well.

Q. "You'd have to be considered; the auctioneer would 1869
have to be considered." Do you remember that being discussed? A. Yes.

Q. "The assignee, myself, and some of the other creditors, such as the three creditors." Do you remember that being said? A. No, sir.

Q. You don't remember anything about the three creditors would have to be taken care of? Did you ever hear anything about the $10 bill being thrown to the creditors to keep their mouths shut? A. There is nothing in these papers about it.

Q. Well, I am not asking you what is in this paper. If

870 you are basing all your answers on what is on this paper, please disillusion yourself. Tell me what the facts were. That is all I want.

The Court: Just a minute.

Mr. Corbin: If your Honor please, the question is whether he heard something about $10 being thrown to the creditors to keep their mouths shut. I object to that because there is no evidence in this record. That same question was asked and excluded on the examination of Hoffman by the District Attorney.

The Court: Well, if he is asking a question I will
871 permit him to ask the question. I will overrule the objection as to his right to ask the question. I will overrule the objection as to his right to ask the question. If you are presuming that some witness testified to that then I will sustain the objection. I think it is competent to ask him any question about any $10 bill or anything like that, but to assume that a witness testified formerly is improper.

The Witness: If the objection has been overruled, can I answer that question?

The Court: Well, I will sustain the objection at this time. Let him rephrase his question, if he de-
872 sires to press it.

Q. Was anything said at any time when Mr. Goldman was present and you were present with Mr. Hoffman at this meeting on April 7th that they would give $10 to the three creditors that were present at the meeting on March 25th, 1937? A. No, sir.

Q. That was never mentioned at all? A. No, and the portion which you—

Q. Did you ever hear— A. And the portion which you didn't read on that subject was "We will take care of three creditors and the other creditors who are entitled to share in this estate."

Q. Then I will read it to you, I will read the whole thing. A. Fine. 1873

Q. I don't want to argue with you, Mr. Schulman.

The Court: Very well. Just proceed to ask the question.

Mr. Walsh. This is on page 7.

Q. And the next part is, "God damn right I was steamed and steamed plenty." And the next, "Do you consider it fair? Wait a second. I didn't speak to you since the time I left that meeting, is that right?" Do you remember that being said, sir? 1874

Mr. Corbin: By Mr. Hoffman.

Mr. Walsh: By Mr. Hoffman.

Q. (Continuing) Was that the conversation? A. That was part of the acrimonious discussion that went up and back.

Q. This wasn't acrimonious. I thought you said three pages back that Mr. Goldman had then calmed down. A. I said he was somewhat calmed down, or did I say "subside," but then it looked like he had boiled up again.

Q. You mean Mr. Hoffman boiled up or Mr. Goldman? A. Well, Hoffman is the one that is talking about "steamed plenty". 1875

Q. That's correct. A. Then he must have boiled up again.

Q. Well, tell me, if this was said when you were present, "Wait a second. I asked him if he had an offer, and he tells me go for fifteen hundred when I knew damn well that stock was worth close to two thousand dollars." Was that ever said in your presence? A. Not that I know; not that I remember.

Q. Well, do you deny that it was said? A. I can't admit it and I can't deny it.

Q. You have no present recollection? A. No, sir.

1876 Q. Does this refresh your recollection? A. Not in the slightest.

Q. You read this piece of paper over, haven't you? A. I read it two or three times.

Q. Two or three times? A. Right. There was also mention at that time about ten thousand or twenty thousand. I don't know of any ten or twenty thousand dollar discussion.

Q. All right. Page 10. Was this said by Mr. Goldman, "Intentionally or otherwise, you should take that opportunity. Let us say somebody"—with dashes—"advising somebody else's client" dashes

1877

"Hoffman: I had an appointment with Niehouse.

"Goldman: Let me tell you something. For instance, I represent the three people or four people, let's say."

Incidentally, there were four people in this petition in bankruptcy, is that correct? A. That is right.

Q. "I don't want X or Y or Z, whoever they may be, and as long as they are designated by letters"—with dashes—"to come to the sale. It so happens that you were up today * * * or even the attorney for the assignee, I'm sure that 1878 said to the creditors where the assignee represents loan creditors"—do you know what that was about? Does that refresh your recollection? A. There was some discussion on two things, I mean, so far as what you read to me.

Q. You see, I wasn't there and I want you to tell me. A. I agree that you weren't there.

Mr. Fielding: I will concede that he wasn't there.

A. (Continuing) But I also agree that I am being faced with that—

Mr. Walsh: I object to this, if your Honor pleases, and I ask that the witness be directed to answer the question.

The Court: Very well, gentlemen. I think we will make better progress and it will be clearer to the jury and to the Court if you will ask the questions, and then you answer them, and if you want to make an explanation to any one of them, you may do so. 1879

Now you may propound the question again, Mr. Walsh.

Mr. Walsh: Will you read it?

Q. (Read.) A. There was some discussion on two things. I think Goldman unbraided Hoffman for trying to have spoken directly to a Mr. Niehouse of Butler Bros. when he knew that somebody else had represented Butler Bros. The impression that I got was that one lawyer, Hoffman, tried to talk to somebody else's client behind that somebody else's back, as far as I know, and as far as I cared about that part of the situation. 1880

Q. Well, I don't care what you care about. As a matter of fact, Kandell represent Butler Bros., didn't he? A. So far as I know, yes.

Q. Go ahead. A. No. 2: Mr. Morton Goldman also made the point that it is quite incongruous, so to speak, for an assignee to represent personal loan creditors in the family and at the same time be the assignee. In other words, he is in a position where he has to serve two masters at the same time and that the courts of the State of New York have decided in many cases that an assignee, such as this, must be or should be removed from his position, no matter how honest he is otherwise. 1881

Q. There wasn't any question in your mind that Hoffman was honest and Kolman was honest, was there? A. I knew —I knew nothing to the contrary and I took him to be honest.

Q. And you had nothing to base your reason to the effect

1882 that the sale on April 5th wasn't honest either? A. It wasn't a question of honesty at all. It was a question of rolling up a thousand dollars or more in administration expenses that we objected to.

Q. Was there any part, during the time of the course of the conversation between yourself and Mr. Goldman and Mr. Hoffman when it would appear that Goldman and Hoffman were again friendly? A. No, not at all. They were never friends.

Q. Well, I ask you this—do you remember this—on page 13, Mr. Fielding—"Schulman: Who is going to be the one to appraise the merchandise," and then Mr. Goldman said,
1883 "We have private stock bidding against each other, and it isn't a private auction sale for the reason a man may take that and buy it privately. Once a sale has taken place there. Well, a sale will bring, for example, you believe, $2000, and it should bring privately more. And yet I asked Cohen and he says twelve to fifteen hundred.

"Hoffman: Twelve to sixteen hundred dollars.

"Goldman: You get as low as twelve hundred or as high as sixteen hundred. That meant to say he got a group of people in"—do you remember a conversation to that effect—

1884 Mr. Fielding: Followed by dashes.

Mr. Walsh: Followed by dashes, may the record indicate.

Q. (Continuing) Do you remember that conversation? A. Some part of it, yes.

Q. What parts do you remember? A. Well, the general theme of it.

Q. Well, do you remember the general theme about the "and buy it privately"? Do you remember anything about that? A. No.

Q. That isn't the general theme, the "private buying"?

A. No. The general theme is to have different buyers look 1885
at it, have it properly appraised. Right in the portion only where you are reading you will find Morton Goldman had stated it should be appraised by the Underwriters Salvage Company at a certain figure, then the cash buyers should have an opportunity to look at it and the highest price—

Mr. Walsh: May I ask your Honor to instruct the witness to answer without elaborating?

The Court: Well, I think he is entitled to make his explanation. I will let him answer.

A. (Continuing) Based on a reputable appraisal, such 1886
as should be made by the Underwriters Salvage Company; we should then try to get different buyers and know that we are getting the right price and the highest price bids on it.

Q. Well, you certainly never used the Underwriters Salvage? A. I certainly did.

Q. In this case? A. No, sir.

Q. I thought you had Jack Michaels. A. The Underwriters Salvage Company would charge me ten or fifteen dollars or twenty dollars for an appraisal. Jack Michaels I sent there not only to appraise but also to see if he 1887
could bid on it, and there was no financial obligation from me to him.

Q. Did you hear him say Mr. Kreiselman sent him down? A. He said that Kreiselman went with him on my recommendation. That is what he said, and that is the fact.

Q. You were here this morning, weren't you? A. I was here all the time.

Q. And didn't you hear Mr. Michaels say that you called Kreiselman up and Kreiselman called him up and went down to appraise this stock? A. That is what he testified at my recommendation.

1888 Q. But in the paper that you signed, Defendants' Exhibit C,—you wrote that affidavit out for him, didn't you? A. It isn't an affidavit. It's a statement.

Q. You wrote it out for him, though, didn't you? A. That is what he told me on May blank, 1940, when I wrote it.

Q. There is no question about that fact, that Defendants' Exhibit C is in your handwriting, other than Jack Michaels, is there? A. Not the slightest question at all.

Q. And you said, "I was called up by Jacob Schulman." A. That's right, and I would say that I did call him.

Q. How about this "$1000 top"? A. That is exactly what Jack Michaels told me.

1889 Q. But you are talking about $2000 here, on April 3rd. A. Oh, Mr. Hoffman is talking about $2000, and on April 14th he starts right out with the statement that the stock is not worth $200; he should have meant $2000.

Q. Well, you know this better than I do. A. Well—

Mr. Fielding: I move to strike that out.

The Court: Yes, strike it out.

A. Well, I do not wish to make any reflection.

Q. Goldman said, "You get as low as twelve hundred or as high as sixteen hundred." Do you remember that con-

1890 versation? A. No.

Q. Do you remember this:

"Hoffman: How many auction sales did you conduct? Did you conduct plenty of auction sales? For the assignee or trustee or for the receiver? How many auction sales did you conduct?

"Goldman: Plenty of them."

Did you ever hear that? A. There was a discussion on that basis.

Q. That Goldman had conducted plenty of these various private sales? A. I don't know whether his answer com-

prised or included private sales or auction sales or anything 1891
like that, but it is safe to say that Goldman conducted plenty of sales. Whether they were private or public I don't know and I am not interested.

Q. May I go back. You said that you don't remember that particular portion of Goldman's statement where I read: "We have private stock bidding against each other, and it isn't a private auction sale for the reason a man may take that and buy it privately."

You do not remember anything about that? A. That makes no sense and I can't make any sense out of it either.

Q. And it didn't refresh your recollection when you read it over? A. No, sir. 1892

Q. You have no present recollection at all? A. Except that there must have been a general discussion as to the efficacy, so to speak, of private sales and bulk sales and auction sales and underwriters' sales and assignees' sales. There was that general discussion.

Q. I mean, that is what Hoffman testified, that there was going to be a private sale. Does that refresh your recollection as to what Mr. Goldman meant when you were talking with him, when he said "buy it privately"? A. No. I think Mr. Goldman will explain that.

Q. O. K. Now when you were referring before—do you remember this conversation— 1893

Mr. Fielding: Page?

Mr. Walsh: Page 15.

Q. —"Goldman: I made the auctioneer give me a guarantee * * * let him guarantee that it will bring $2000"—and with dots—"I have got a guarantee here for $10,000"—dots—"minimum guarantee"—dots.

Do you remember that? A. No, sir.

Q. Well, didn't you just call my attention to that a few moments ago? A. Sure I did. I told you that I read it

1894 and that I don't remember any side talk about ten or twenty thousand dollars.

Q. I am asking you now about "that it will bring $2000" and then Goldman says, "I have got a guarantee for $10,000." A. No such talk.

Q. Now subsequently, and prior to the time that Goldman left, were he and Hoffman still angry at each other? A. I would say unfriendly, yes.

Q. Had they calmed down at all? A. They calmed down all right but I guess they were decidedly unfriendly.

Q. Now, after Mr. Goldman left did you have a conversation with Hoffman then or did you leave for a few moments
1895 with Goldman? A. No, sir.

Q. Did you stay right in the room with Hoffman all the time? A. That is right.

Q. You didn't go out in the hall at all with Goldman? A. No, sir.

Q. Did Goldman prior to the time he left say anything that he was going to have nothing more to do with this sale? A. No.

Q. Then he wasn't so mad at the time? A. I say, he remained unfriendly with Hoffman.

Q. But he was going to continue working with you so
1896 far as the preparation of papers is concerned, etc.? A. I had assumed that, yes.

Q. Well they did—the Goldmans did prepare papers subsequently, didn't they? A. Certainly they did but you are asking me on April 7th, not May 6th.

Q. Now after Goldman left—do you remember this conversation—

Mr. Fielding: Page?

Mr. Walsh: 17.

Q. —"Hoffman: Let me tell you something, when the assignee was down there, he reported that one of the buyers

that came down there said that the stock was worth close 1897
to eighteen to nineteen hundred dollars, and was willing to pay fifteen hundred, and kick back three or four hundred, so we can get an idea of what the stock is worth, so what's he trying to do, kid me? What's ten thousand dollars, minimum offer? What's he giving me a buggy ride?"

Do you remember that conversation after Goldman left? A. No.

Q. You don't remember? A. No, sir; never heard of kickback in this case.

Q. What is that? A. I never heard of a kickback in this 1898
case.

Q. You never heard of it? A. No, sir.

Q. What do you call it? A. I call it a creation out of somebody's mind, Mr. Hoffman's mind.

Q. And then you are alleged to have said, "They run into big cases. I told him, this is a small case, but it's a good case." Do you remember that conversation? A. Maybe, most likely.

Q. To whom did you tell it was a good case? A. To Hoffman.

Q. You didn't mean Goldman then, did you? A. Goldman had left the room, hadn't he?

Q. Under this—yes, he had. A. How could I be talking 1899
to him on the outside?

Q. You are talking now to Hoffman. A. Exactly.

Q. And you told him isn't that the reason Goldman wanted to get in here, because you told him it was a good case? A. No.

Q. A small one but a good one? A. No.

Q. Hoffman knew it was a good one. He said they were going to get almost 100 cents on the dollar. A. When did he say that?

1900 Q. That is what he told the creditors on March 24th. A. He himself denied that he said it.

Q. As much and as near 100 per cent on the dollar as possible. A. Which means exactly nothing, a very deceptive term.

Q. Well, I will read on further now:

"Hoffman: You know what I'd do, my friend?

"Schulman: This is a good case where the creditors would legally get their money without any trouble or waiting or bother, and this monk had to stick his face into it causing every trouble or any-

1901 thing. Hungry, I'm not hungry. The hell with that goddam thing. You s[illegible] how many assignments I handle?"

Do you remember saying that? A. No, sir.

Q. What? A. No, sir.

Q. Whom did you mean by "this monk had to stick his face into it"? A. I am telling you if I don't remember the conversation I can't tell you whom I am referring to as "monk."

Q. You don't remember that at all? A. No, sir.

Q. Does this refresh your recollection, that you might

1902 have meant Mr. Morton Goldman? A. No, not at all.

Q. In other words, you deny that that was ever said in that room? A. Not in that fashion.

Q. Well, what was said? A. My thought was, and if there is any testimony on this—

Q. What is your recollection? A. My recollection is—

Q. What? A. —that a case like this should be handled expeditiously and not in the form of an assignment where the administration expenses are at least 5 per cent to 1—five for administration expenses and one for creditors.

Q. Well, this is what you say, or at least this is what is recorded: "This is a good case where the creditors would

legally get their money without any trouble or waiting 1903
or bother." A. That is right.

Q. Do you remember having said anything like that? A. No, sir. Under an assignment they wait a year, at least that. Under a bulk sale they get it in ten days, fifteen days.

Q. You know more about that than I do.

Mr. Fielding: I move to strike that out.

The Court: Yes.

A. I have much more at stake than you do.

Q. No, you haven't!

Now, the voices became low and then it starts in again, 1904
and you are supposed to be the individual that is speaking. A. Yes.

Q. And it says, "with all the big cases and everything else, they're working exactly for glory. If they do grab themselves five hundred or seven hundred or we grab ourselves one hundred fifty, and they wind up with all their forty or fifty or sixty creditors in the office and a couple of stinking lawyers and everything else, they wind up less net than you and I. You understand, that's what I told this fellow, and the proof is not only that they run after those fifteen hundred dollar bills and all that, 1905
but they have time to do it."

Do you remember making statement such as that? A. No, but I can explain it. It does recall to mind something.

Q. What is it? A. For instance, if they remain with forty or fifty or sixty creditors, that doesn't make any sense at all, so I didn't say it.

Q. Well, what does it recall to your mind, that you did not say it? A. I did not say that portion of it.

Q. Well, what portion did you say? A. Well, will you let me answer it?

Q. Surely. A. I also didn't refer to lawyers that have an

1906 olfactory odor or an odor that offends the olfactory nerves. I did say this to Hoffman—

Mr. Walsh: Is that clear, Mr. Corbin?

Mr. Corbin: I thought he said "factory".

The Court: Very well, gentlemen. Let us proceed.

A. I did say this to Mr. Hoffman, that he and I or fellows of our type, we single practitioners sometimes wind up with more net in different matters than Goldman, Malter & Goldman do because their overhead is so large and so that 1907 after paying all their rent and wages and what not, they remain with less than what the single practitioner gets out of the fee.

Q. Is that what this recalls to your mind? A. That is right.

Q. Is that the reason why Hoffman said, "I don't know what your financial background is or isn't, but I say two hundred today in your pocket is worth three hundred next year—possibly three hundred next year." A. Hoffman said that to me?

Mr. Fielding: I object to the question because it is improper. That is what the notes say.

1908 The Court: I will sustain the objection.

Mr. Walsh: I will reframe the question.

Q. That is, at least, what is recorded by Bodinger? A. That I said that?

Q. I said Hoffman said that. A. No, but I never said anything like that to him that I remember.

Q. And then—

Mr. Fielding: Where is this?

Mr. Walsh: Page 18.

Q. —"Schulman: Tentatively now, and then if its wrong. 1909.
"Hoffman: About 10:30 tomorrow morning."

He left that night and he had a date with you for the next morning at 10:30? A. No.

Q. He didn't? A. No.

Q. You don't remember that? A. No, sir.

Q. And then a telephone call came in and you said, "Hello, Mr. A., look, the man with the key is not available now." Whom did you mean by "Mr. A"? A. Will you please read on in that conversation?

Q. Yes, I will be happy to. "If I don't call you by ten o'clock tomorrow, then the appointment stands for ten o'clock at 36 the Bowery. Just the judge, I and Avery 1910
and all that stuff. Where? Who sent you? Oh yes."

And then Hoffman says, "Mr. Schulman, I'm going back to my office. Tentatively for 10:30 tomorrow morning."

You are alleged to have said, "O. K., yes.

"Hoffman: Goodnight."

Now, who was Mr. A? A. I don't know. It might be Mr. Avery there. There was a Mr. Avery in our conversation, isn't there?

Q. Well, you are talking of a "Mr. A." A. I don't know.

Q. You don't know who Mr. A is? A. No, sir.

Q. Could it have been Abramson? A. No, sir.

Q. You are positively sure? A. I am positive about that. 1911

Q. There is no question in your mind at all? A. About what he was doing in 36—

Q. I am not asking what he would or wouldn't be doing. There is no question in your mind that this man whom you had the conversation with, Mr. A. was not Mr. Abramson, is that correct? A. Mr. A, the judge and Mr. Avery had nothing to do with the Hymowitz case.

Q. I am asking you now whether or not Mr. A was Mr. Abramson? A. I don't know that this Mr. A is the correct transcription anyhow. Mr. A don't fit in with Mr. Avery and the judge and you and I.

1912 Q. Well, could it have been Mr. G? A. I don't know.

Q. Could it have been Mr. Goldman? A. No, no.

Q. Well, who were you talking with? A. I don't know. It seems to be about another case.

Q. Oh, no.

Mr. Fielding: I move to strike that comment from the record.

The Court: Yes.

Mr. Walsh: I will withdraw it. I made a mistake.

Q. I will read you now further. After Mr. Hoffman says "Goodnight," then the notes say, "Hoffman apparently left,
1913 and Schulman apparently continued with the phone call."

Did you have a telephone call on that day after Mr. Hoffman left? A. In those days I must have received about twenty or thirty calls a day.

Q. Well, did you have a telephone call after Mr. Schulman left? A. After Mr. Hoffman left—I don't know.

Q. Mr. Hoffman. A. No.

Q. Well, perhaps this will refresh your recollection. You are supposed to be speaking, and these are the notes of Mr. Bodinger now that I am reading:

"I'm in a position now, I control."

1914 What did you mean by that? A. I don't know.

Q. Did you say it? A. I don't know whether I said it or not.

Q. Well, do you deny that you said it? A. I don't admit it and I don't deny it. If you will read the whole conversation at one time you will see that it must refer to another instance, to another case.

Q. All right, I will. "I'm in a position now, I control—what was the figure that you had, the appraisal? He wanted to give the creditors 80 cents on the dollar—fighting to give it to them." Do you know whom that meant? A. I will tell you, sure.

Q. Tell me now. A. My best recollection is, and if you will read the— 1915

Q. Tell me now. I can't wait for the answer later on. He is "fighting to give creditors 80 cents on the dollar—fighting to give it to them." Whom did you mean there? A. At that time I had ~~a Mr.~~ Needleman who was—

Q. Needleman? A. Wait a minute.

Q. Well, I just wanted to get the correct name.

Mr. Fielding: I would like the District Attorney not to interrupt.

The Court: No. You have asked him a question. Let him answer it.

Mr. Fielding: He gets information and when he does not like it he tries to cut it out. 1916

Mr. Walsh: I was trying to get the correct spelling of the name Needleman.

A. He was the president of the "First 88 cents Stores." He at that time gave me a matter he settled with creditors on—or I handled a certain portion of his settlement with creditors where he gave them 80 per cent. Then he made an extension agreement with them whereby he agreed to pay 100 cents on the dollar. He paid them, I believe, 60 cents on the dollar, and then he had a creditors' meeting and then he offered to pay creditors an additional 20 per cent so as to give creditors 80 cents on the dollar. I represented that debtor. I was his attorney. 1917

Q. What was the name of the debtor? A. First 88 Cents Stores, Inc. The records are in this court.

Q. In what year? A. 1937.

Q. 1937? A. Right.

Q. What was the month, do you remember? A. I do not—around April of 1937.

Q. You were handling that case at the same time you

1918 were handling this case? A. Fortunately I had more than one case.

Q. You say that you represented the debtor? A. In that case, yes, I dismissed the petition which somebody had filed against him.

Q. And then you continued, "No fooling. We had to throw it into bankruptcy and steps and so, in order that he should make a dollar?" Did you have to throw the other one into bankruptcy, too? A. No. Somebody else threw that one into bankruptcy.

Q. Well, is this correct that I read to you—and correct me if I am wrong—"We had to throw it into bankruptcy."

1919 A. No.

Q. That is not correct? A. No.

Q. Well, is this correct, "I'm in a position now, I control"? Is that correct? A. I was in charge of the case.

Q. And then we continue this telephone—do you remember to whom you were talking to now? A. No, sir.

Q. You don't know who Mr. A is now? If it comes to you, let me know, will you? A. (No answer.)

Q. "So here's what he did." A. Is that a wisecrack?

Q. "Between you and me, he wanted to give creditors 80 cents on the dollar." That's Mr. Needle? A. It may well be that this is the "First 88 Cents Stores, Inc."

1920 Q. That's Mr. Needle? A. It may well be that, and I think that is that case.

Q. And you are talking now about the Needle case, what I am reading to you? A. I think so, yes.

Q. Well, do you know? A. That's my best judgment.

Q. Well, what is your best answer? A. That's my best answer.

Q. And that is the truth? A. I hope so.

Q. And then you continue, "Between you and me, he wanted to give creditors 80 cents on the dollar, so there was no room for the boys." Do you remember that? A. If

you will transpose that "we" and make it "they" it might mean something. 1921

Q. Well, we will do that and see what that means. A. You are putting the burden of trying to reconstruct something so that it doesn't make any sense.

Q. Well, this makes sense to me. I am asking you what it meant to you at that time, "so there was no room for the boys." What did you mean by that? A. I don't know.

Q. You don't remember that, do you? A. No, sir.

Q. Period. "So we dumped it on it." Do you know what that meant? A. I couldn't explain that in a million years, "we dumped it on it."

Q. In other words, I think it means "we dumped in on it." 1922

Mr. Fielding: I move to strike that out.

Q. Would that refresh your recollection?

Mr. Fielding: I move to strike out what the District attorney thinks about it.

The Court: I will sustain the objection. Gentlemen, I will say this: Don't let us have any side remarks. Mr. Walsh, ask any questions you want to and when objection is made I will rule upon it, but don't argue the case to the jury at this time. I am going to give both sides ample opportunity to argue the case when it is concluded. 1923

Q. Well, if I said that it is probably correct to say "so we dumped in on it," would that refresh your recollection?

Mr. Fielding: I object to transposing any of the language that is on this exhibit.

Mr. Walsh: Well, he doesn't remember it, if your Honor please.

The Court: I will sustain the objection so far as the construction of the language is concerned.

1924 I will permit him to ask any question he wants to that is relevant, whether it is in that document or not, but if you are going to ask a question from the document then it should be literally asked in the language of the document itself.

Q. And then we continue, "Do you understand? The reason I tell you is this. He had two or three men of his own, his auctioneer"—by the way, who was the auctioneer of Needleman? What was his name in that 88 cents thing? A. Needleman?

Q. Needle. A. Needleman.

1925 Q. Needleman? A. Yes, sir.

Q. Did Needleman have his own auctioneer? A. No. The creditors I think sent auctioneers to his place.

Q. So when you say, "He had two or three men of his own, his auctioneer," did this conversation—do you still say this conversation related to Needleman? A. That is right.

Q. And the 88 cents thing? A. I think so.

Q. You wouldn't say that he meant Hoffman because Hoffman had his own auctioneer? A. At that time there may have been pending a half a dozen bankruptcy cases.

Q. I am asking you whether or not you meant, when you

1926 said "he had two or three men of his own, his auctioneer"—A. It could be Needleman had his own cash buyers.

Q. Well, you just said that he didn't have his own auctioneer. A. Cash buyers to appraise his stock for the purpose of making a settlement, seeing what it is worth.

Q. Well, we are agreed on this, that Wishbow was Hoffman's auctioneer? A. Oh, sure.

Q. No question about that fact? A. Nobody ever disputed it.

Q. Does that refresh your recollection that this conversation related to the Hymowitz case when I read to you as

follows: "He had two or three men of his own, his auc- 1927
tioneer, that wanted to give him eighteen hundred to two thousand, you understand?" Do you remember that? A. No recollection of any connection with the Hymowitz case.

Q. Was Goldman associated with you in the Needleman case? A. He might have had some claims; I don't know.

Q. He wasn't associated with you? A. No, sir, not in that case.

Q. And then you continue, "Now Goldy even"— A. Kandell was.

Q. What? A. Kandell was.

Q. In the other case? A. Yes.

Q. Had you ever called Mr. Goldman "Goldy"? A. No, 1928
sir, never did, and I don't know that anybody else ever did.

Q. Now you say, "Now Goldy even said that it would bring sixteen hundred." Do you know to whom you referred when you said "Goldy"? A. There wan no Goldy in the Hymowitz case.

Q. And then the next statement is this, "Goldman is smart." Does that refresh your recollection? A. No, sir.

Q. Well, there is no question—I will withdraw it. And then you continue, "He says he'd bring twelve hundred and sixteen hundred, understand?" Does that refresh your recollection that it was the Hymowitz case? A. No, sir, because if you will read on further you will see that it 1929
relates—

Q. He will come to that. A. Fine.

Q. This does not refresh your recollection as yet that it has to do with the Hymowitz case? A. No, sir.

Q. "So figuring when he told me that somebody had raised it to two thousand and wanted to give it to him at the figure"—does that refresh your recollection?

Mr. Fielding: That isn't the finish of the sentence.

Mr. Walsh: I am sorry.

1930 Q. (Continuing) "I figured Goldman would get thirty-three hundred for it." Does that refresh your recollection? A. That refreshes my recollection to a point of definiteness and positiveness that there was no mention at all about $3300 in the Hymowitz case.

Q. Was there any mention of $3300 in the Needleman case? A. Might have been because—

Q. Well, was there? A. I think so. He had a $6000 stock.

Q. So now you are definite that this refers to the Needleman case? A. That is my best judgment, that it does refer to the Needleman case.

1931 Q. That is your best judgment? A. Yes, and my best judgment is the other can't possibly relate to the Hymowitz case. There was no $3300 involved in Hymowitz.

Q. But Goldy or Goldman—was there a $1200 mentioned in the Hymowitz case? A. It was, later on.

Q. Was there $1600 mentioned in it? A. Later on.

Q. But because it says here $330 for it, you are definite now that it has nothing to do with the Hymowitz case? A. That is one of the reasons, a very good one.

Q. "But as it is now take another look and tell me"—I will continue—"You don't have to. If we can get a few dollars for ourselves the result is three." A. Didn't

1932 you leave out a dash?

Q. Yes. "If we can get a few dollars for ourselves"—I did, I am sorry. A. Well, that makes a vital difference sometimes.

Q. All right. You explain it. A. I can't explain a dash. I can't.

Q. "If we can get a few dollars for ourselves"—dash—"the result is three." Does that refresh your recollection? A. I can't piece together those remnants.

Q. Well, what do you mean by this "the result is three"? A. Well, if I had the context of the preceeding thing I

could tell you, but this is, thoroughly un—not sensible. 1933

Q. I will give it to you. A. Fine.

Q. "If we can get a few dollars for ourselves"—dash dash—"the result is three." Does that help you to refresh your recollection as to what was meant? A. No. A thousand things might have been said or intended.

Q. Well, I am giving you this opportunity, Mr. Schulman. A. You are giving me an opportunity to fill in dots and dashes of three years ago?

Q. Well, your memory is pretty good on other things. You remember the dashes. A. I remember that you left them out.

1934

Mr. Fielding: I move to strike it out.

The Court: Yes, I will sustain the motion.

Mr. Walsh: I assure you I didn't do it intentionally.

Mr. Fielding: I move to strike it out.

The Court: I will sustain that motion.

Q. You don't know what was meant in that conversation "If we can get a few dollars for ourselves"—dash dash—"the result is three"? A. I certainly can't attribute to myself any sinister motive from that.

Q. Was there anything in the Needleman case that would refresh your recollection that that might have meant the Needleman case? A. No, sir. 1935

Q. "If we can get a few dollars for ourselves the result is three." A. No, sir.

Q. Did you hear Mr. Hoffman testify? A. That what?

Q. That there was going to be the proceeds, the secret fund was going to be split in three ways. A. He didn't say exactly—he never used the word "secret fund" and in all of the papers that you have in your hand there isn't one word that says "secret fund," "hidden fund" "fraudulent fund" or any other words.

1936 Q. Well, we will call it "private fund." A. You haven't got "private fund" in this paper.

Q. Well, I don't want to argue with you, Mr. Schulman.

Mr. Fielding: I will move to strike that out.

The Court: Yes. I will sustain the motion.

A. Or a surrepetitious fund or anything else.

The Court: Very well. Proceed with the next question.

Q. Well, does that refresh your recollection as to whether
1937 or not you said that, sir, "If we can get a few dollars for ourselves the result is three."

Mr. Fielding: Dash dash.

Mr. Walsh: Dash dash.

A. Now did you leave that out by mistake? Excuse me, I don't mean to be quarrelsome. I am under a strain.

Q. I don't mind; go ahead. A. Those dashes can mean a vital difference between day and night. I don't know that I am to supply the dashes.

Q. Well, I am not asking you to. A. You are.

Q. I am asking you—A. You are.

1938 Q. —whether or not that refreshes your recollection that this phrase, "If we can get a few dollars for ourselves" —dash dash—"the result is three." Does that refresh your recollection? A. No, sir. I can't piece these remnants at all.

The Court: He said that two or three times.

Q. "I'll meet you there tomorrow at 10:30, or else if you like, you can come here around ten and I'll go with you."

Mr. Walsh: I don't know what this is supposed to be, and I wouldn't take the opportunity of reading

it without your sanction, Mr. Fielding, "Whey." 1939
What do you want me to call that?

Mr. Fielding: "Whey." That is all I can get out of it.

Q. (Continuing) "Whey, where is it near? I'll have my car here anyhow. The other deal I'll know tomorrow as I told you yesterday also. I'm in control. Yes." Does that refresh your recollection? A. Not at all. I don't know what "other deal" I had at that time.

Q. Well, you said before that it might have been the Needleman deal. A. I didn't say the Needleman deal at all, Mr. Walsh. I never referred to the Needleman case 1940
as the "Needleman deal" and you know it.

Q. All right, the Needleman case. A. That's different.

Q. I did not mean anything by it. A. Well, it has a very—

Mr. Fielding: I move to strike that out.

The Court: Yes. I will sustain the motion.

Mr. Walsh: If your Honor please, I am not going to argue with this witness. I am trying to get information.

The Court: You need not apologize for anything. Just ask questions and I will rule upon the objections as they are made. 1941

Q. Well, does that refresh your recollection? A. No, sir. I don't know what other deal was pending at that time at all.

Q. Now I didn't use the word "deal" that time at all. A. It says that the other deal—the other deal. You are asking me what the other deal is. I don't know. I can't tell you.

Q. But it doesn't refresh your recollection what the other deal was? A. No.

Q. And then you continue, "I'm in control. Yes. Did

1942 you see him there? That's why it's in bankruptcy. I know he will. Yes, yes. All right. Look, I'll tell you this much. In just about a day or so apart. I beg your pardon, I didn't ask that. No. No. I didn't ask that. O. K., big boy, I'll meet you there at 346 tomorrow unless I call you up to the contrary about 10 o'clock."

Now will you please tell me what "346" means? A. 346 Bowery meant the Hymowitz case.

Q. There is no question of that? A. Certainly, but if you will read the next week's testimony you will find that I wasn't even there with Mr. Abramson.

Q. We will come to that, but at least you are talking
1943 with Mr. A, whoever he may be, that you are going to meet him at 346 the Bowery the next morning. A. Oh no, oh no. Does that indicate I was talking to Mr. A?

Q. Well, you explain it. The conversation—"Hello, Mr. A." You start right out with that. "I'm in a position now, I control," and you wind up, "I'll meet you there at 346 tomorrow unless I call you up to the contrary about 10 o'clock." A. And I wasn't there.

Q. Well, does that refresh your recollection that this conversation had to do with the Hymowitz case? A. No, sir.

Mr. Walsh: May we have a recess?

1944 The Court: Yes, we will take a few minutes recess.

(Short recess.)

Q. Mr. Schulman—oh, incidentally, did the numbers 346 come up in that Needleman case? A. I don't know.

Q. Is there any doubt in your mind that the 346 at the end of the telephone conversation referred to 346 the Bowery, the Hymowitz store? A. To be frank with you that would be pure guesswork.

Q. And you wouldn't take a chance of guessing? A. No, sir. I don't know that he ever heard it right.

Q. He did not take it out of the clear air, did he, 346? 194
A. There are a lot of other names and whatnot, like Fishbaum instead Wishbow and Goldman for Kolman, that he mistook. I don't know where it came from.

Q. Do you remember Mr. Kolman who was the assignee? A. Yes.

Q. And do you remember on direct examination he testified—

Mr. Fielding: Page?

Mr. Walsh: 258.

Q. —"Did you go down to the store in the company of 194
the defendant Schulman? A. I made an appointment with Schulman. I think it was in the early part of April, in the early afternoon. He said that he wanted to show the stock of merchandise to a prospective buyer. I made that appointment and I met him there that afternoon." A. I heard him so testify.

Q. Do you say that did not happen? A. I say now that it couldn't happen 10:30 in the morning and 2 o'clock in the afternoon, isn't it?

Q. You say you were not there, and then the next question was as follows: "Q. Did he come along? A. He was accompanied by a person whom he introduced as Mr. 194
Lieberman, and I think with him was another man. I don't recall whether he said he was Abramson or not."

Do you remember him testifying? A. He so testified.

Q. And do you deny that you were down there with either Mr. Lieberman or with Mr. Abramson? A. I certainly do, and I will tell you why—may I?

Q. Sure, go ahead. A. For two reasons—

Q. Well, give me one first. A. First, both Mr. Lieberman and Mr. Abramson testified that they were—

Q. Listen—

Mr. Walsh: This is argumentative, if your Honor

1948 please. The mere fact that they testified—

The Court: It is not responsive.

Mr. Walsh: To the effect that Schwartz told them to go down there.

The Court: Just a minute. It is not responsive to the question. The question is, Did you go down there with Mr. Lieberman or Mr. Abramson?

The Witness: Well, for two reasons, no, for three reasons it is no.

Q. I will take ten reasons "no." That's your answer? A. You let me show you a certified check that Mr. Abramson
1949 had on March 31, 1937, where he had another deal on Castle Hill Avenue. He had stated March 31st—it is certified, March 31st; if you want to look at it it is here in court.

Q. It wasn't shown to Mr. Abramson, was it? A. Beg pardon?

Q. It wasn't shown to Mr. Abramson? A. It is Mr. Abramson's father's check. He has it.

Q. And is that the reason, because you say Abramson had the check dated March 31st, 1937, I presume—that is the reason you say you went down in April at the store at 346 Bowery? A. No.

1950 Q. Is that reason No. 1? A. No, sir.

Q. All right, give me reason No. 2 now. A. No, sir. Abramson testified that he was there with another lawyer, by the name of Mormen.

Q. He could have been there twenty times. I am asking you whether or not—A. He said he was there only once.

Q. —you were there with Mr. Abramson at 346 Bowery? A. No, and I will tell you why, because on April 14 in your minutes you will find I telephoned to Phil Cohen and asked him what Abramson offered. If I had seen Abramson on April 7th or April 8th I wouldn't have to telephone to Phil Cohen what Abramson offered.

Q. That is reason No. 2? A. That's right. 1951

Q. Anything else? A. And reason No. 3 is I wasn't there.

Q. We will take that No. 3 reason as No. 1 reason, you were not there. Is that your answer? A. Renumber them any way you like, please.

Q. And then the next question was this: "Q. Well, tell us what happened that afternoon, what conversations took place. A. Well, after Lieberman inspected the merchandise Schulman said, 'How much can you tell us,' and they withdrew to a corner of the store—I was a short distance away—and they talked in a low whisper, and during that conversation I heard the expression "five line.'" 1952

Do you know what five line means? A. I heard it this morning.

Q. That is the first time you ever heard it? A. Oh no, oh no.

Q. I asked you if you knew what it meant. A. I heard it used before.

Q. Do you know what it means? A. I have no definite knowledge of what it means myself, but I heard that expression used.

Q. Then Mr. Kolman continued, "After their conversation Schulman turned to me and he asked me whether he could talk to me the same as he could to Hoffman, and 1953 I said, 'No, Hoffman was handling that.'" Do you remember such conversation with him? A. No, sir.

Q. "I then closed the store and Schulman and I walked towards Broadway. During that walk he told me that Hoffman was childish because he had opened up to the judge and told him the plan of Goldman.". Do you remember him telling you that? A. That's only one stooge testifying to help Hoffman; nothing else. There was no such conversation.

Mr. Walsh: If your Honor pleases; just for the

954 purpose of the record I ask that that characterization be stricken from the record.

The Court: I will strike out the entire answer as not being responsive to the question.

Mr. Walsh: Not that I object to it, though.

The Court: Very well. I will strike it out.

Mr. Fielding: I move to strike that out.

The Court: Yes, I will strike that out, too.

Mr. Walsh: I want it to appear in the record.

The Court: You can ask the question again, if you desire an answer to it.

955 Q. And continuing, "And he said, well"—oh, just a moment. Did you have such a conversation with Mr. Kolman that you told him that Hoffman was childish because he had opened up to the judge and told him the plan of Goldman—did you have such a conversation with Kolman? A. No, sir.

Q. Did you have such a conversation with Kolman at any time? A. No, sir.

Q. During the pendency of the Hymowitz matter? A. No, sir.

Q. In which you stated those words? A. No, sir.

Q. I will continue, "And he said, well, he supposed that
956 Hoffman was very stubborn and that we were greenhorns and we had no right being in the case." Did you say that to him at any time? A. No, sir.

Q. Either at 346 or walking toward Broadway? A. No, sir.

Q. "I asked him why and he said, 'Because just as others control the millinery line and the house furnishings line, so this Dry Goods Association controlled the dry goods and men's wear line, and any time there was an assignment the Goldman outfit handled it.'" Did you ever say that? A. No, sir, that is contrary to the fact.

Q. Because we will come to that later, is that what you mean? A. No. Goldmans don't handle the Dry Goods Association cases. 1957

Q. Do you deny that you had such conversation with Mr. Kolman? A. I do.

Q. At any time? A. I do.

Q. To that effect? A. Right.

Q. And now we come down to the 14th of April in 1937, and was Mr. Hoffman at your office on that occasion? A. My best recollection is that he was.

Q. You did not know that the federal agents were in the room opposite you, did you? A. I wish I did.

Q. You would never have spoken this way, would you? 1958
A. I would have used—there is nothing damaging there yet.

Q. Well, we will see.

Mr. Fielding: I move to strike that out.

The Court: Yes. I will sustain the motion.

Q. Well, Hoffman was present with you on that day? A. I assume so.

Q. And you did have a conversation with Mr. Hoffman in your office on April 14th, didn't you? A. I assume so. I have no—

1959

Q. You read— A. The minutes, yes.

Q. What minutes are these? A. 20.

Mr. Fielding: Government's Exhibit 20-A.

Q. Government's Exhibit 20-A in evidence, from which I will continue to read. You read Government's Exhibit 20-A, didn't you? A. I did.

Q. And is there any doubt in your mind that Hoffman was there on that day after having refreshed your recollection from Government's Exhibit 20-A? A. I must assume that he was there.

1960 Q. I am not asking you for your assumption. Was he there? A. I imagine he was. I have no independent recollection that he was there other than because of these papers.

Q. You don't remember? A. No.

Q. But did this refresh your recollection that he was there? A. I wouldn't fix the date of April 14th or any other date.

Q. You wouldn't say Mr. Bodinger was wrong when he said he took this transcription on April 14, 1937, would you? A. I respect his veracity on that point.

Q. On that one point you would? A. (No answer.)

Q. Is that correct? A. Why limit it on that point? We
1961 are only talking about April 14th.

Q. Now I will read you this and ask you whether or not this refreshes your recollection that you had been down to the store on April— A. The 8th.

Q. —April 8th, 1937. Mr. Hoffman says—page 1— A. He begins with a conversation by saying the stock is not worth two hundred. It should be two thousand.

Q. Perhaps you are referring to something else, Mr. Schulman. A. I am referring to the page you are looking at, the first page, April 14.

Q. Where it starts:

1962 "Schulman: Listen, big boy.
"Hoffman: The upshot is"—
Mr. Fielding: No. A lot of dots.

Q. (Continuing) "The upshot is the stock is not worth two hund ed"—and you say it should be corrected to two thousand? A. Yes. Hoffman said that.

Q. It should be two thousand? A. I think so, because there is no sense about two hundred.

Q. No. We are talking about two thousand most of the time.

Mr. Fielding: I move to strike that out.

Q. (Continuing) "Schulman:" —dots—"said"—dots— 1963
"and the man said to put it in at fifteen hundred dollars in order to put the wriggle in through Fishbaum." He means Wishbow there, doesn't he? A. I imagine he does.

Q. There is no question about that? A. Well, don't you see how some of this—

Q. Wait a minute. Is that the correction you would make, Wishbow instead of Fishbaum? A. Yes, I would. It also shows you that some of these minutes are inaccurate. That is what I said at the very beginning.

Q. I never disputed that. I merely asked you whether or not this refreshed your recollection. A. That is right.

Q. I want you to explain anything that is inaccurate in 1964
the minutes. A. Oh, I can't go over Mr. Bodinger's minutes and tell you what is inaccurate three years later. I could do it a day later perhaps, two days later, but not three years later.

Q. Well, perhaps this will refresh your recollection, "Hoffman: I want it as far as you or I are concerned"—dots, three of them—"we can have this first woman that you had down here, Abramson, and he gives it fifteen." Does that refresh your recollection? A. I never sent a woman down there and I never sent Abramson down there. My appraiser was Jack Michaels.

Q. All right. Now I continue: 1965

"Schulman: No, I'll tell you what I'll do. Cohen said"—three dots.

"Hoffman: Isn't Abramson the fellow that Cohen had down there at first?

"Schulman: I think so because he told me. I'm going to call up Cohen right now and ask him whether he can get any more money."

Does that refresh your recollection? A. That refreshes my recollection that I didn't go down there with Mr. Abram-

1966 son if I had to call a third party to find out what it is worth.

Q. Well, I am not interested in your reasons. A. No, that is just a plain answer.

Q. You did not go down with him? A. Exactly.

Q. You did not go down with him? A. Exactly.

Q. And then Schulman makes a telephone call. Does this refresh your recollection:

"Hello, who is this, Phil Cohen? Say, Phil, on that Bowery stuff."

1967 Now are you talking about the Hymowitz store? A. I assume so.

Q. Well, is that your present best recollection, that you were talking in this conversation concerning the Hymowitz store? A. That is right.

Q. "What is the top that you could get? Yes. No, no. Wait a minute. It so happens that you sent over Abramson without my knowing it. At that time I also called in Abramson and Abramson told me fifteen hundred dollars. Right." Does that refresh your recollection, sir? A. As to what, that I sent Abramson over there or that I was with Abramson?

Q. "I also called in Abramson and Abramson told me
1968 fifteen hundred dollars. Right." A. I may have spoken to Abramson on the telephone.

Q. Well, I don't know. Did you? A. I may have, but I never went down to that store with him.

Q. Well, is Mr. A. Abramson? A. No, sir.

Q. Who is Mr. A? A. I don't know.

Q. It is not Mr Needleman? A. If all Mr. Bodinger heard was "A", I don't know if it is A or Abraham or Abramson or anything else.

Q. I am asking you now, sir, whether or not that refreshes your recollection. A. No, sir. I will not say that

that Mr. A, as is given in the minutes, is Mr. Abramson. 1969

Q. All right. "Now can I let it go to Abramson for fifteen? Yes. No. O. K. Yes. You think it's definite on fifteen? O. K. I'll talk to him. Might squeeze him over if I can. If I can't"—dash dash—You understand what I mean? Because I have a conference with another lawyer here, Mr. Hoffman, and I want to know definitely where he stands and where you and I stand, you know what I mean, as far as the value of the stuff. If he can get 17, 18, 19"—dash dash—Right. O. K." What did you mean by "if he can get 17, 18, 19"—did that mean hundred dollars?

Mr. Fielding: I object to the question because it isn't proof that he said it. 1970

The Court: I will sustain the objection.

Q. Does that refresh your recollection, sir? A. That refreshes my recollection that I wanted Hoffman himself to go out and get buyers and maybe he will get buyers that will be higher than 1500, might get 1600, might get 1800. The highest bidder would buy it and also that Mr. Phil Cohen at that time told me that he wasn't definite that Mr. Abramson would pay $1500 to include the food tickets because Mr. Abramson didn't want them at first, from what I understood from Mr. Phil Cohen. 1971

Q. Now does that refresh your recollection, Mr. Schulman, that you did have a conversation and that "17, 18 and almost 1900" was offered for this stock? A. No, no. That's the worst misconstruction I ever heard of. The only sensible—

Q. Is that your answer? A. Certainly, sir.

Q. All right. Thank you.

Mr. Fielding: May I strike out the words "Thank you"?

The Court: No, I will let that stand. Overruled.

Mr. Walsh: Now on page 3, Mr. Fielding.

1972 Q. Does this refresh your recollection whether or not Mr. Hoffman said this when he was in your office on April 14th, 1937:

"Hoffman: Six hundred dollars expense we'll figure includes Goldman for $125. He takes care of Kandell and Cohen. One hundred and twenty-five for you to take care of your petitioning creditors. Me, one hundred twenty-five for the attorney for the assignee. The assignee gets twenty-five. That means four hundred fifty. Then there is $35 for your expenses for the petitioning creditors, that's $485.

1973 Then in addition to that there are miscellaneous expenses that the assignee has for the insurance premiums and the filing of the assignment, and the certified copies, whatever the case may be."

Does that refresh your recollection, sir? A. Certainly, sir.

Q. Was that said by Mr. Hoffman? A. He may have mentioned it, yes.

Q. Did he say "We'll figure includes Goldman for $125"? A. That is right.

Q. And "He takes care of Kandell and Cohen"? A. That

1974 is right.

Q. That's right? A. That's right.

Q. "One hundred twenty-five for you to take care of your petitioning creditors." Did he say that? A. May have.

Q. Did he? A. Most likely he did.

Q. Does that refresh your recollection? A. Certainly it does. I will tell you what it refreshes.

Q. You mean "Me, 125 for the attorney for the assignee"? That's three ways, isn't it? A. (No answer.)

Q. Isn't it? "125 for Goldman," and "he takes care of Kandell and Cohen"? A. You see, you are reading—you are not giving—

Q. Well, I am asking you whether or not that was said; was it? A. It was said but you don't know in what regard it was said. 1975

Q. Well, I will let you put your construction on it.

Mr. Fielding: I move to strike that out.

The Court: Yes, I will sustain the motion.

Mr. Fielding: And also ask that the witness be permitted to answer the question.

The Court: Very well. I will permit him to explain if he wishes.

A. We figured that there would be an expense of about five or six hundred dollars, all around. If, after paying the creditors their settlement there would then be gross approximately $500; divided in three would be $125—$135 apiece, out of which fund we would have had to pay the landlord, we would have had to pay all the other priorities, like city sales tax, like the auctioneer's expense. Nothing was said here about the auctioneer's—in other words, that $125 was a gross figure. It did not take care of the auctioneer's expense; it did not take care of the rent; it did not take care of the assignee's bond and all that. We purposely said that so that each one should try to keep down the expenses as much as possible. In other words, there would have to be a re-allocation from that figure of 125, and in your papers of April 21st you will find that when those expenses are taken care of— 1976 1977

Q. We will get to April 21st. A. Beg pardon?

Mr. Fielding: I submit the witness be permitted to finish his answer.

The Court: Very well. I will let him go on with his explanation.

A. (Continuing) And in the April 21st figures that we used, when we took the auctioneer's expense and the rent

1978 expense and the other expenses into considration we said we would be left with net $80, and Hoffman even said "Am I doing all this work for $80," so then I said, "Well, we will do some of the paper work."

Q. Who do you mean "we"? A. I would, Mr. Goldman would.

Q. The Goldmans did most of the paper work, didn't they? A. (No answer.)

Q. What paper work did you do? A. I signed the petition, the involuntary petition; I signed the petition for a stay.

1979 Q. You weren't doing the paper work. You were signing your name. Is that the paper work in your estimation? A. I think so; certainly.

Q. I will take that.

Mr. Fielding: I move to strike out "I will take that."

The Court: I will sustain the motion.

Q. Now you say that you remember this conversation. "Goldman for $125. He takes care of Kandell and Cohen"? A. That's right.

Q. "One hundred twenty-five for you to take care of
1980 your petitioning creditors." A. That is right.

Q. Who were your petitioning creditors? A. Those three people, Schwartz & Zuckerman, Ribach and Mantis, Kreiselman. I think there was talk at that time—

Q. Are they the three that attended that first meeting—A. Before Judge Coxe. They incurred an expense before Judge Coxe by coming down to the courthouse in a taxicab and I wanted to reimburse them for that kind of an expense.

Q. And how much were you going to give them, $10 apiece? A. No, sir.

Q. How much? A. No, sir, whatever they would ask

me, whatever their bill was, and if they also went to the store— 1981

Q. Well, they did not go to the store. A. They did go to the store.

Q. Did you ever give them anything? A. I never gave them a dime.

Q. Now may I refer back for a moment—does that refresh your recollection that the conversation that you had on April 7th:

"If we can get a few dollars for ourselves the result is three"—dashes—"the result is three."

Mr. Fielding: I object to the question because he did not—it is not in the record that he said it. 1982

Mr. Walsh: I am asking him if it refreshes his recollection what it meant.

The Court: Yes. I will overrule it.

Mr. Fielding: Read the question.

Mr. Walsh: I will withdraw the question and reframe it if there is any question at all.

A. I will answer it, whether it refreshes my recollection.

Q. Does it? A. It does not.

Q. Thank you. Whereabouts are Rabis & Mantis located? Where are they located? A. Now they are at 558 Broadway. At that time they were in 17 Orchard. 1983

Q. And where was Schwartz & Zuckerman? A. 15 Orchard.

Q. And how much would their cab fare be over here? A. I do not know.

Q. It is not far, is it? A. I don't know.

Q. Well, how far is Orchard Street from here? A. I don't know what the cab fare would be.

Q. Well, is it 20 miles? A. No.

Q. How far is it? A. It is a ride of about 20 minutes.

Q. So you were going to take care of your petitioning

1984 creditors; you were going to get $125 to take care of the petitioning creditors; is that right? A. No, no. I was going to get $125. From it my proportionate share of the balance of the expenses would be deducted.

Q. That includes rent? A. That included the rent, that included the auctioneer's labor, that included advertising.

Q. Well, now between April the 7th and April the 14th did you communicate with Mr. Morton Goldman or Theodore Goldman at any time? A. I don't think so.

Q. You never communicated with them at all? A. I don't think so.

Q. Well, I mean have you any present independent recol-
1985 lection that you did? A. No, sir.

Q. Or you did not? A. No, sir.

Q. Well, I will continue: "That means 450. Then there is $350 for your expenses for the petitioning creditors, that's $485. Then in addition to that there are miscellaneous expenses that the assignee has for the insurance premiums and the filing of the assignment, and the certified copies, whatever the case may be; and whatever it may be, about $15 all around including the premium on the insurance policy. That would be—wait a second, we'll come to that. Let's see, that's 375, and Goldman for 125, and yourself. That's 375 and 25 for the assignee is 500."
1986 A. It should be 400, shouldn't it?

Q. Well, it should be, but I am just reading it. A. I understand. I am just calling attention.

Q. I merely read that. A. But 325 and 75 make 400.

Q. That is correct. I have no dispute as far as mathematics with you.

"Then comes your disbursements of 35, that's 535, $15 disbursements, that's expenses 550. That leaves $50 over for the other incidental expenses. That brings it up to 600. That means there is $500 left for creditors so far as the sale is concerned."

Does that refresh your recollection that such a conversa- 1987
tion was had? A. I can only tell you that we figured $500 gross expenses, and the balance would be, as you look down further—the balance would be $700 from the stock and $300 from the food tickets. That would mean $1000 for the creditors, but since there is that arithmetical mistake, you will read on further and you will see where I figured out 900 into 25, see, instead of 1000 into 2500, the total liabilities of creditors. There's your story.

Q. Well, they start off with $625 of expenses? A. It should be 525.

Q. No. We are starting off with 600. A. Oh no.

Q. Then there is 125 for you, 125 for Goldman and 1988
125 for Hoffman? A. No.

Q. That is 385, isn't it? A. No.

Q. 375? A. No.

Q. Well, I won't dispute it with you. But you did say that out of that money, you were going to take care of the premiums and you were going to take care of rent— A. Oh no, you haven't read rent.

Q. I asked you that three minutes ago and you said you were going to take care of the rent out of this expense fund. A. That's right.

Q. That is correct, isn't it? A. That is correct, yes, out of the 125. 1989

Q. And then do you remember this being said by Mr. Hoffman on April the 14th—

> Mr. Fielding: You mean the report?
>
> Mr. Walsh: I think at this time we all know what I mean, if your Honor please. This is the report of Bodinger that I am reading from and have been for the last hour and a half or two hours.
>
> Mr. Fielding: Well, it doesn't appear in the record.
>
> Mr. Walsh: I am sorry.

1990 Q. I am reading now from Exhibit 20-A, page 4:

"Hoffman: About 20-5 per cent. Before you're going to figure that, don't forget the landlord doesn't come in from this point on as a general creditor. He is a preferred creditor during the time the assignment was in effect.

"Schulman: He has a right to a check."

Do you remember saying that? A. Why, certainly.

Q. In other words, they were going to pay the landlord with a check. That landlord fee wasn't coming out of that general expense that you were going—A. Why not?

1991 Q. —to whack up, were you? A. Wait a minute. That "whacking up" business isn't there at all.

Q. Then I will withdraw it. A. Wait a minute. Now that you mention it, let us have it.

Q. "He has a right to a check." A. Now, please, Mr. Walsh. You did not like the use of your expression "whack up." Now please be good enough to let me show you two or three lines later where I say that we will reserve from that fund $65 for the landlord's claim.

Q. Well, "He has a right to a check." A. Why, certainly. I did not want—

1992 Q. That is a legitimate expense, isn't it? A. Why, certainly it is.

Q. That the assignee has to pay? A. Certainly.

Q. Therefore you can give him a check? A. Certainly.

Q. There is no question of that? A. Certainly, but we say make a reserve from that fund of $55.

Q. But, Mr. Schulman, when I asked you before about the figure "includes Goldman for 125. He takes care of Kandell and Cohen. One hundred twenty-five for you to take care of your petitioning creditors. Me, one hundred twenty-five," and you said from that general fund, "we would have to pay rent," didn't you? A. Right, right, right.

Q. Didn't you? A. Right, right; certainly, and two or 1993
three lines later, which you don't like to read, you will find that there is a reserve suggested by me of $65.

Q. Well, if your attorney will show me that I would be most happy to read it. A. Give it to me, please. I will show it to you.

Q. I would be happy. I want you to get the whole story in here.

Mr. Fielding: I move to strike that out.

The Court: Yes, I will sustain the motion.

Mr. Fielding: We don't want any magnanimity here.

1994

(Exhibit handed to the witness by Mr. Walsh.)

Q. Did you find it? A. You only gave me one page in a half a second.

Q. Well, I thought it was directly after this. A. I will find it and I will show it to you.

Q. Well, go ahead and find it for me and show it to me. A. (Examining).

Q. Wait. I will give you the original (handing to witness). A. What are you giving me?

Q. I am giving you Government's—A. Thank you.

Q. —marked in evidence so that there won't be any 1995
dispute about it. A. Here, on page 3: "Schulman: I'll tell you what. Let's for the time being make a reserve of $65."

Mr. Fielding: And dots after that.

The Witness: And dots after that.

A. (Continued) So that $600—

Q. May I just a minute? Where? A. Right here (indicating).

Mr. Fielding: Right above where you started to read the part, "Six hundred dollars."

1996 Q. And is this what you say now: "I'll tell you what. Let's for the time being make a reserve of $65," with the dashes. Now what do you want to fill in for those dashes, that that is for rent? A. Let me read the next question, please.

Q. Surely. If you want to put that in—A. Yes.

Q. —I have no objection. A. Here, here, don't do me any favor because you haven't shown any inclination up to now.

Mr. Walsh: Now I move that that be stricken out too.

1997 The Court: Yes, I will strike it out.

Mr. Fielding: And the same motion with regard to Mr. Walsh's remark.

The Court: Yes, I will strike it out.

The Witness: "Hoffman: Six hundred dollars expense we'll figure includes Goldman for $125."

Q. That is what I have been reading. A. In other words, $500—

Q. It says $600. A. It says 600, but I call your attention to the fact that there was an arithmetical error of $100. There should be—we had figured on paper—

1998 Q. Well, do you remember this conversation—A. Excuse me, sure—500 or approximately $525 was going to be a total fund for expenses out of which we made certain reserves.

(Paper handed to the witness by Mr. Walsh.)

Q. All right. Put down "125" three times. A. All right. That's 375 (writing).

Q. That is one for Goldman, one you and one Hoffman? A. That's right.

Q. That's $125, is that correct? A. Yes, but you are forgetting the main premise, which is $525 for general

expenses. It says, "625," but it should be "525." 1199

Q. Well, I will take your explanation if that is what you—A. Well, it is not an explanation. It is arithmetic.

Q. I am perfectly satisfied.

The Court: Very well, gentlemen. Let us proceed. Ask the next question.

Q. Do you remember saying this: "Schulman: He has a right to a check."? A. Why, certainly a landlord has a right to be paid in full.

Q. Oh, I am not disputing that. A. Well, neither am I.

Mr. Fielding: It doesn't seem possible with all this colloquy— 2000

The Court: Let us proceed with the next question.

Q. On page 5: "Hoffman:"—

Mr. Walsh: At the bottom of page 4, Mr. Fielding.

A. Do you want me to write any figures, Mr. Walsh?

Q. No. A. All right.

Q. "What is the first thing to do?

"Schulman: Now I'll tell you.

"Hoffman: Supposing you get a sixteen hundred buyer"—periods or dots—"then it will be split three ways. 2001

"Schulman: Naturally."

A. Exactly.

Q. Do you remember that conversation? A. There must have been a conversation—

Q. Do you remember? A. —about a conversation, about a supposed buyer of about 15 or $1600.

Q. And "then it will be split three ways"? A. What, $1600?

Q. "Supposing you get a sixteen hundred buyer," and

2002 then there are three dots—"then it will be split three ways."

Do you remember such a conversation? A. I maintain that my own—

Q. And you said "naturally"?

Mr. Fielding: Let the witness answer the question.

The Court: Let him answer the question. He asked, "Do you remember any such conversation as that."

A. I remember that there was definite talk that every-
2003 thing above the initial payment to the creditors, and taking off later the expenses, my suggestion was that it should be divided three ways: Myself, Mr. Hoffman, Mr. Goldman or the firm of Goldman, Malter & Goldman. There is no dispute about that.

Q. Well, do you remember a conversation with Mr. Hoffman: "Supposing you get a sixteen hundred buyer," and three dots, "then it will be split three ways."

"Schulman: Naturally."

Do you remember that, sir? A. I have answered that question according to my previous answer.

Q. All right. Now I am going back to page 4, just
2004 previous to the last question. It starts off:

"Schulman: Thirty-three and a third per cent"—dashes—"we'll give them thirty-six plus three hundred, plus the what do you call it, plus the City Sales Tax."

A. The relief tickets it should be.

Q. What is that? A. It should have been the relief tickets.

Q. "Plus the City Sales Tax"—three dashes—"get a further distribution"—three dots—"another ten per cent

or twenty-five per cent or forty per cent. When Goldman 2005
had that figure"—three dashes—"here is 36%. Another 10% of 2500 is $250. So it's 36 and 10 is 46." Then it continues, "So shove them through a 40 or 45% and we keep the balance."

A. That's right.

Q. Does that refresh your recollection? A. Exactly. That is what I have been trying to tell you.

Q. You keep the balance after you "shove them through a 40 or 45%" dividend? A. Settlement.

Q. Is that right? A. Gross, gross, to cover all the expenses, and it even indicates that I used the figure $300 as the figure from the city relief tickets. That's what 2006
we were talking about all the time. A

Q. And then I read to you—or Hoffman said after you stated—A. May I add something to the previous answer?

Q. Sure. A. All right. Now how does that sentence begin, Mr. Walsh, please?

Q. Which one? A. The one that you last asked.

Q. "So shove them through a 40 or 45% and"— A. No, that doesn't begin it that way—

Q. "Hoffman: What is the first thing to do?

"Schulman: Now I'll tell you."

Mr. Fielding: He didn't want that. 2007

A. All right, thirty-three and one third—all right. Now one-third—first I tried to figure one-third of 2500 and you find that it is $800, approximately $800. Then when you figure 25 per cent of $2500 you find that it is $600. That shows that their—is it 600? Oh, a little over 600. That shows that the balance of the gross expenses and fees of $500 is approximately 600 and some odd dollars. That is equivalent to 25 per cent. Then if you add that—then if you add on $300 or 10 per cent of 2500 is 250. That makes it 25 and 10 is 35, and so we stretched a

point by paying them a 40 per cent settlement. In other words, if I had a fund of $300 relief tickets, there you have your 40 per cent settlement calculated.

Q. Are you finished? A. (No response.)

Q. Is there any other explanation you want to give? A. That is no explanation. That shows black on white how we were figuring it.

Q. Do you remember this conversation as recorded by Mr. Bodinger on April the 14th:

"Schulman: Now I'll tell you.

"Hoffman: Supposing you get a sixteen hundred buyer," and three dots—"then it will be split three ways?

"Schulman: Naturally.

"Hoffman: And then what do you have to do? You have to dismiss the petition first?

"Schulman: That's right. The first thing for you to do is get a bill of sale from your man with an affidavit.

"Hoffman: Well then, I'll tell you what you do. You prepare the necessary papers as long as you said you'd do the papers, whatever is necessary to go through with this.

"Schulman: Yes. The only thing is, first get a bill of sale signed by your party.

"Hoffman: I'll have to go up to"—and then certain dashes—

"Schulman: Now get from him a bill of sale with an affidavit as to"—three dashes—

"Hoffman: Well, it's already catalogued.

"Schulman: Number 2. Get a waiver of all these personal little things."

A. It should be "personal loans," not "personal little

things." There is one instance where I can supply the omission. 2011

Q. Well, I am very happy to get it.

Mr. Fielding: I move to strike that out.

The Court: I will sustain the motion.

Q. "Hoffman: Well, I have two affidavits in respect to the money."

"Schulman: Except"—

A. To the money loaned.

Mr. Fielding: Dots. 2012

Q. Dots. A. It should be "for the money loaned."

Q. "Schulman:"—A. Exactly.

Q. —"Except for this $300, get waivers from the rest." A. That is $300; we were talking about a synagogue; remember that?

Q. Those are the personal loans? A. Personal loans.

Q. Your memory is getting better now as I read it? A. Well, I don't know.

Q. I think it is. A. Good.

Mr. Walsh: Well, I will withdraw that. 2013

Q. "Schulman: In other words, I want to be left clear. Or give me an affidavit of creditors totalling $2500.

"Hoffman: All right."

Do you remember those conversations? A. Why, certainly. I insisted on getting an affidavit for $2500 that ultimately, when I would get the money for distribution, we shouldn't be faced with a $3000 or 4000 or any other total of creditors' claims. In other words, I wanted to know if I had so much money to distribute that I had to distribute it to creditors whose total claims totalled

2014 $2500; otherwise there wouldn't be a 40 per cent settlement, and I wanted the personal loans waived.

Q. Now I show you Government's Exhibit 8 and ask you if that is the bill of sale that Mr. Hoffman got for you or as a copy; you have the original, is that correct (handing witness)? A. He left me the original of this paper.

Q. And that is for how much? A. $1200.

Q. $1200? A. Sure.

Q. And have you the original with you in court? A. I gave it to Mr. Fielding.

2015 Mr. Walsh: Have you got the original, Mr. Fielding?

Mr. Fielding: If he gave it to me it is here. (After searching) I haven't got the original. I only have copies of it.

Q. Did you tell Mr. Hoffman to put L. Wein in there, of 430 Grand Street, Manhattan, New York? A. No, sir. I think he told me that Mr. Kandell—or Mr. Cohen told him to use the name of L. Wein of 430 Grand Street.

Mr. Fielding: We have the original (handing to Mr. Walsh).

2016

Q. Mr. Cohen or Mr. Kandell told Mr. Hoffman? A. I say that that's what Hoffman told me.

Q. But did you tell Hoffman to put the name "L. Wein" in there? A. I don't know. I don't think so.

Q. But you heard Mr. Abramson on the stand, didn't you? A. Yes.

Q. And he said on many occasions he used the name "L. Wein" when he purchased articles? A. That's his business.

Q. Well, you knew that he used that name, didn't you? A. I had one $80 transaction with Mr. Abramson in the

year of 1936 or 1935. Other than that I had no business relations with Mr. Abramson at all, and the transaction that I had with Mr. Abramson late in 1935 or early in 1936, this $80 related to a dress store on Eighth Avenue. 2017

Q. Let us go back to page 1 again:

"Hoffman: Isn't Abramson the fellow that Cohen had down there at first?

"Schulman: I think so because he told me. I'm going to call up Cohen right now and ask him whether he can get any more money."

Do you remember that? A. Certainly.

Q. And then do you remember; further down here: "At that time I also called in Abramson and Abramson told me fifteen hundred dollars. Right." 2018

Do you remember that? A. There must have been such a conversation.

Q. Now I ask you again do you remember who it was that told Mr. Hoffman to put the name "L. Wein" in there? A. Hoffman told me that he was told by Kandell—I think it was Kandell; it may have been Cohen, I don't know. I think it is most likely Kandell told him to put the name "L. Wein" and I know Hoffman testified to the contrary. I know Hoffman testified that I told him to put in the name "L. Wein." 2019

Q. And then do you remember this conversation as recorded in Government's Exhibit 20-A—

Mr. Walsh: This is page 6, Mr. Fielding.

Q. (Continued) "Hoffman: When will you let me know whether it's fifteen or sixteen?

"Schulman: Make it $1.00 and other valuable consideration.

"Hoffman: How is he going to show if he pays by

2020 check, if the client is going to pay by check"—three dashes—

"Schulman: He can pay any way I tell him. In other words, the difference between"—three dots—"if I were you, I'd put out that bill of sale for, say, $1300, say twelve fifty is the balance."

A. Put the bill of sale out for $1300?

Q. Do you remember whether or not you made the statement that "He can pay any way I tell him." A. Why, certainly.

Q. To whom did you refer? A. To Mr. Abramson.

2021 Q. To Mr. Abramson? A. Yes. In other words, if you could get a $1500 offer for two different commodities, one is a stock and one is a relief ticket, you can have 1200 for one and 300 for the other. What difference does that make?

Q. Well, was Mr. Abramson going to buy the relief tickets too? A. Certainly. Phil Cohen told me that.

Q. Phil Cohen told you that? A. Told me that. Mr. Lieberman said so yesterday too, and the reason why it couldn't be included all in one lump sum is that the city relief tickets of some three or four hundred dollars are not assignable, right on their face they say "non-transferable."

2022 Q. And then further on you say this—Mr. Hoffman is recorded by Mr. Bodinger—

Mr. Fielding: What page?

Mr. Walsh: It is now the next thing—

A. May I interrupt, Mr. Walsh,

Q. Absolutely; sure. A. You see, you read over there we will take the bill of sale, let us say, for $1300 and then there was another reading there which said, "And the balance is 1250." Now that's clearly erroneous.

Q. It says, "1250 is the balance," I said. A. Yes, 1250

is the balance. In other words, 1300 is the bill of sale and 2023
1250 the balance, that's clearly erroneous, Mr. Walsh. Don't you agree with me?

Q. I have no dispute with you. A. Thank you.

Q. I am asking you whether or not this merely refreshes your recollection. A. Exactly.

Q. As to what was said? A. Exactly.

Q. "Now the next thing is this. If the contract for the bill of sale is $1250, you will get the difference of 250 or 350 as the case may be. How are you going to set certain fees and expenses against that $1250?

"Schulman: Exactly. We can say that we are 2024
satisfied ourselves with a fifty or seventy-five dollar bill, you understand? In other words, we can divide so much officially and so much unofficially."

Do you remember that, sir? A. I don't remember the exact words but there was talk like—

Q. That you would divide so much "officially"? A. Yes, sir.

Q. And so much "unofficially"? A. Right—yes, and the meaning for that is plain. The official part—

Q. I will take it. A. The official part is that which we pay out to creditors, let's say $1000. Now the balance, the 2025
expenses—

Q. Wait till I get that straight. The official is what? A. Is the fixed amount that we have to pay out to creditors. That's definite.

Mr. Fielding: May the witness continue the answer?

The Court: Yes, let him explain. Answer the question.

A. That's definite. That's the fixed amount.

Q. The official—

2026 Mr. Fielding: I again request the Court to let the witness finish the answer.

The Court: Have you finished?

The Witness: I have not.

The Court: Very well, proceed.

A. (Continued) Now the balance of the money which is not fixed and which has not been determined, we will have to work that out separately. That is all there is to it.

Q. Is there any more explanation? A. No. One amount is fixed and one amount is unfixed.

Q. Well, what is the amount that is fixed? What would
2027 that include? A. Just the payment to the creditors.

Q. And then the administration? A. That would have to be worked out. That would have to be worked out because I said, I think, on the minutes of April 21, we agree to sit down at a table and figure out all these expenses and try to agree on them. On April 7th I further said that if we three or four couldn't agree on what the expenses should be then we would call in the rest of the creditors or any of the creditors to fix it for us.

Beg pardon? That's all?

2028 Q. Now, you say the amount that the creditors would get is fixed? A. Certainly.

Q. Is that correct? A. Certainly.

Q. And according to your terminology that's the official figure? A. That's the official figure that they get.

Q. That's fixed? A. That's fixed.

Q. And the unofficial figure is what, according to that? A. Is that which we will have to fix later on when we sit down at a table and go over the figures and see whether we agree on the figures.

Q. Well, isn't it a fact, Mr. Schulman, that you can't decide what you are going to pay the creditors until you

get all the expenses? A. Not at all, and I will tell you why. 2029

Q. Surely. A. There never was an agreement between Hoffman and myself as to how much the auctioneer should get. He wanted to give him $100 besides—for a fee besides his expenses, and I said in those minutes there which you are reading, that that will almost be as much as—that will be more or approximately as much as we would get and I resented it by saying "Since when are auctioneers partners with lawyers?"

That's one thing, and I even said on April 21 or April 26, "I don't take credit for anything. I don't fix the amount." I say, "We will sit down and we will try to iron it out." 2030

Q. But how can you get the official figure unless you know what expenses are going to be? That is what I want to know. A. Well, we figured that the creditors are entitled to at least 40 percent.

Q. Oh, they are entitled to everything other than legitimate expenses? A. Naturally.

Q. That is correct, isn't it? A. Naturally, certainly.

Q. Well, why don't you figure the list of expenses out first, which you call unofficial before you fix what the official figure is? A. You couldn't.

Q. Why? A. Did we know in advance?

Q. You could figure out what expenses are— A. No: 2031

Q. When you get a thousand dollars you can't figure at that time what the expenses are? A. No, sir, and I will tell you why.

Q. Shoot! A. For instance, the city sales tax we figured for $50. Actually Hoffman settled it for $300. Now could you figure that out in advance?

Q. But you don't set the official figure until you have that city sales tax finished, do you? A. There was a fund of $500 or 500—

Q Now wait. Let me ask you the question. A. All right.

2032 Q. Isn't it a fact that you can't figure out anything so far as the official figure is concerned before you take care of the city sales tax? A. No, sir, you are wrong.

Q. Why? You said it was $1000 and finally Hoffman settled it for $300, is that correct? A. No, I didn't say that.

Q. What did you say? A. I said we figured on settling the city sales tax claim for $50.

Q. And how much did you settle it for? A. Hoffman settled it for $300.

Q. And you were going to settle it for $50? A. Yes, sir.

2033 Q. But at that time did you figure you were going to settle it for $50? A. Yes, sir. There is testimony to that effect.

Q. Was the official figure, so far as the creditors are concerned—was that fixed at that time? A. No.

Q. You couldn't? A. No.

Q. In other words, all the expenses had to be figured out before you could set the official figure? A. No, sir—no. We had a certain fund of 500 or five and a quarter, from which we would make our various payments to the auctioneer, to the city sales tax, to the disbursements and so on and so forth, and then after all that would be left, we

2034 figured there would be about $80 or $90 left for each one of us.

Q. Well, you had no right to that? A. Why not?

Q. Did you? A. Why certainly did.

Q. For signing your name—I will take your own figures. A. Yes.

Q. You say you were going to do the paper work? A. That is right.

Q. To sign your name you are entitled to $80? A. Oh, no.

Q. Is that your conception? A. Oh, no; oh, no. You missed the whole point.

Q. I am afraid I do. A. Well, let explain it to you, 2035
please.

Q. I will be happy to. A. If I would have gotten a 50 or 100 dollar bill or anywheres near it I would have earned it, for this reason: I was instrumental in getting back an estate where creditors realized 40 per cent when before I got in it was in such position that they wouldn't have gotten it.

Q. Hoffman said he was going to give them 80 per cent and they finished it—they got 17 per cent. A. Oh, that is just the reverse of the truth, and I will tell you why.

Q. Shoot! A. Hoffman never said that he would give creditors 80 per cent, and I have figured it because my 2036
participation in this assignment proceeding didn't cost them a nickel, and he finished it and he got creditors 17 per cent.

Q. Well, what do you mean by saying "He was fighting to give them 80 per cent"? A. I wasn't talking about him. He wasn't fighting to give creditors 80 per cent. The creditors that will follow me on the stand will tell you that. He was kidding them about it.

The Court: Very well, gentlemen. We will stop now. It is five minutes after five.

At ten o'clock tomorrow morning. 2037

(Adjourned to July 24th, 1940, 10.00 a. m.)

UNITED STATES OF AMERICA

vs.

MORTON GOLDMAN, et al.

New York, July 24, 1940;
10:00 A. M.

2038

TRIAL RESUMED.

JACOB P. SCHULMAN, resumed the stand.

Cross examination continued by Mr. Walsh:

Q. Now, Mr. Schulman, according to the notes taken by Mr. Bodinger on April the 21st, 1937, Government's Exhibit 19-A—

Mr. Walsh: Page 5, Mr. Fielding.

Q. (Continued) Do you remember this conversation being had between you and Mr. Hoffman:

2039

"Schulman: He gets, let us say, $100. Kandell says, therefore, 50, 75, 25, whatever it is. Actually, Kandell makes more money on a thing like this than anybody else. But what does Martin do? He goes up"—dashes—"and he grabs himself a fifty. That is every day in the weeks. It's five times fifty. Next I"—then dashes—

"Hoffman: Yes, I suppose they get"—a couple of dashes—"boy, what a racket this is. What are we going to do?

"Schulman: Who is going to see"—dash dash—

2040

"the bill of sale. I shouldn't teach you this business. I know if I tell you these things it stays with you.

"Hoffman: Those things you pick up sooner or later.

"Schulman: It took me five years, young man." Do you remember that conversation? A. That was part of the general conversation that I had.

Q. Well, do you remember that part of the conversation? A. Yes.

Q. And did you say that was attributed to you in this transcript? A. In substance.

Mr. Walsh: This is on page 6, Mr. Fielding. 2041

Q. In the same transcript, do you remember this conversation being had with Mr. Hoffman:

"Schulman: "—Hoffman says this first:

"See if that thing is in order.

"So you said you'd get on to it. It took me years to get on. Let me tell you another thing. I don't know now how the average practitioner shows as much honesty and sincerity as you have exhibited in this case."

Did you say that? A. Sure. I complimented him on trying to be honest and sincere with me, and I 2042 with him.

Q. And you did not know how he could make a living that way? A. Oh no, it doesn't say that. Does he say that?

Q. Is that what you meant? A. Oh no, no, not at all, Mr. Walsh.

The Court: Don't let us get into any arguments today.

The Witness: Not at all.

The Court: Mr. District Attorney, I want you 2043 to put the questions and I want you, Mr. Witness, to answer them, and I don't want any remarks back from you or any side remarks. If the witness is required to answer a question categorically yes or no, then he is entitled to make an explanation without any reflection upon anybody whatever. I think this examination has been more or less unduly prolonged and time unduly taken. I am not going to shorten the cross examination, and I am not going to shorten the redirect examination, but I am going to confine this examination today to questions and

2044 answers and not argument. Now it is competent always to show whether or not any party made any statement against interest. I am going to permit that to be shown, but where the testimony or, rather, the statements that were alleged to have been made in the room are not in conflict with his present testimony, that is not permissible to go over it, and I am going to stop it of my own motion where he does go over it, because, gentlemen, if we proceed in this manner of taking line by line of immaterial matters—and some of them are immaterial—why, it will take us another ten days on this case which I 2045 cannot give to it, and I am saying this with all deference to you gentlemen, without any criticism or anything, but just as a suggestion how I would like for you to proceed.

Mr. Walsh: Thank you, your Honor. I have cut it down very considerably since yesterday.

Page 7, Mr. Fielding.

Q. And do you remember, Mr. Schulman, this conversation being had between yourself and Mr. Hoffman on April 21, 1937:

2046 "Schulman: All right, that's fine.

"Hoffman: You say you're getting sixteen hundred?

"Schulman: Fifteen or sixteen hundred.

"Hoffman: Listen, bum, is there any more that you're getting out of this"—dash dash—"on the level? I mean without a smile.

"Schulman: Seriously, I'll show you. You shouldn't have any doubts. I'm glad that you're frank about it.

"Hoffman: Yes, I want to be frank about it."

Did you have such a conversation? A. I don't

think all the words that you just read were said at 2047
that time. I don't believe that Mr. Hoffman addressed me as "bum" or anything of the kind.

Q. Well, do you remember that "Listen, bum, is there any more that you're getting out of this"—dash dash—"on the level? I mean without a smile." A. No, I don't remember that.

Q. You don't remember that? A. No.

Mr. Walsh: Page 9.

Q. Do you remember this conversation being had between you and Mr. Hoffman on that occasion: 2048

"Hoffman: You mean these three monkeys that you got there, these bums?

"Schulman: Yes.

"Hoffman: I thought you're taking care of them from your end. Wait a second. I thought you're taking care of them from your end."

Do you remember that conversation? A. No, sir.

Q. Does that refresh your recollection? A. No, sir.

Q. Well, was there any conversation had between you and Mr. Schulman at that time— A. Mr. Hoffman. 2049

Q. Or Mr. Hoffman in taking care of the three creditors who were present at the meeting on March 24th when they were going to throw them a $10 bill apiece and you were going to take care of them from your end?

Mr. Fielding: I object to the question.

The Court: I will overrule the objection.

Mr. Fielding: Exception.

A. In all of the time on April 21 there wasn't one suggestion or one word mentioned about $10 apiece to the creditors. There wasn't any talk about referring to them

2050 as "bums" and there wasn't any talk about my taking care of them to the extent of $10. The minutes don't show it. The only think I think on the previous week there was a suggestion that I should take care of their disbursements, taxi fare in going to the courthouse and when they left their business perhaps, other expenses, in going to the store with other creditors, but that's about all.

Q. In other words, your answer is that the incidental expenses that these creditors had in taking a taxicab to the Federal Building and expenses going down to the store to look it over, you were going to take care of it from your end, is that right? A. With whatever other expenses they

2051 had, yes.

Q. Incidentally, did these three creditors or your two creditors ever pay you the $35 that you put out on the disbursements for filing the petition in bankruptcy? A. My net loss was about ten or fifteen dollars.

Q. I asked you a question. A. No, they never did.

Q. Who paid you? A. I took the loss myself.

Q. Did the Goldmans ever contribute to the loss that you sustained on that occasion? A. No, sir.

Q. Did you ever ask them for it? A. No, sir.

Q. Do you remember this conversation,—

2052 Mr. Walsh: Page 13, Mr. Fielding.

Q. (Continuing) "Hoffman: I see.

"Schulman: I'm only figuring the City Sales Tax which is $300. If we get five, that's fine.

"Hoffman: You mean you divide three ways whatever is received from the City.

"Schulman: And if we only get three, three hundred from the city, we make $180 apiece, which is more than what you would have made in any other event."

Do you remember such a conversation to that effect? A. No, sir, and I will tell you why. 2053

Q. You don't remember it? A. No—wait a minute. That is an error in transcription. That should be $80 apiece because a page or two later Mr. Hoffman says, "Well, why am I doing all this work for, for $80 my end?"

Q. Well, this was going to be the division of the moneys received from the city which would up your end, say, $100? A. No.

Q. Three ways? A. No; $300 plus the $1200 would be $1500 and then there would be approximately $80 left, net, for the three lawyers. The next page or two will show that Hoffman himself clarifies it, talks on about different 2054 expenses.

Q. Do you remember this being said by yourself—

Mr. Walsh: On page 14, at the bottom.

Q. (Continued) "I'll tell you what I'll do. Martin or I will do the paper work and deliver it to your office."

Do you remember such a conversation? A. Yes, but the statement before that shows Hoffman says, "Why should I do all this work for $80."

Q. I will read that to you. A. Fine.

Q. "Wait a second. You think I'm going through all 2055 this paper work for eighty dollars or one hundred dollars? You think I'm going to bother much more with this? I'm sick and tired of this." A. That is right.

Q. Then you say, "I'll tell you what I'll do. Martin or I will do the paper work and deliver it to your office." A. That is right.

Q. Is that correct? A. That is right.

Q. Does that refresh your recollection? A. That is right. That shows essentially the figures we were working on, 1200 and 300, after taking care of the expenses, there might be $80 apiece for the three.

2056 Q. That is before you figured the $300 for the city A. Oh no. In yesterday's talk we figured the city—not the City Sales Tax; that is a mistake in transcription also—the city relief tickets for $300. There is another instance right nearby where Mr. Hoffman says, "If all we get is $80, then I am not sufficiently paid."

Q. Now on April 26th did you also have a conversation with Mr. Hoffman in your office, referring to Government's Exhibit 18-A? A. 18—yes.

Q. And on that occasion did you speak to Mr. Wishbow over the telephone? A. I don't remember that I did.

Q. Well, having read Government's Exhibit 18-A, does
2057 that refresh your recollection whether or not you did or you did not speak with Mr. Wishbow over the phone? A. It is likely that I did, it is likely that I did.

Q. What is your present answer? A. My present recollection after having seen the minutes is it may well be that after seeing the minutes I did speak with him over the telephone.

Q. Well, did you speak with him? A. I imagine I did.

Q. So your answer is yes? A. My answer is what I have given it to you.

Q. And what is that? A. After having read the minutes
2058 and refreshed my recollection from that, my best judgment is that I did speak with him over the phone on that day.

Q. Can you, without going over this, tell us what you said to Mr. Wishbow on that occasion on the telephone? A. He wanted—he wanted from Mr. Hoffman, as Mr. Hoffman narrated it to me, while Hoffman was speaking over the phone, that he wanted some assurance that he would get paid his labor and his fee. I said to Hoffman—I said to Hoffman and I said to Wishbow that when I get this money, whether it is 1200 or the 1500, I wouldn't touch a dime of it, I wouldn't take a postage stamp for myself or for anybody else. I am making no commitments or ar-

rangements about his compensation at all, that I would 2059
sit down with him, with Martin Goldman, with Mr. Hoffman at a table and try to adjust his claim for compensation and for labor that he had, on the general theme that if we three or four could not arrive at a satisfactory solution on that point or any other point, then we would call in the creditors to be the sole judges and arbiters.

Q. Was there anything said about giving a receipt for the $1200 on that occasion? A. I know that I issued a receipt for the bill of sale which I—

Q. I asked you specifically if there was anything said on that occasion concerning a receipt for $1200. A. I don't believe so because I didn't have the money. 2060

Q. Was there any dispute or was there any argument between you and Mr. Wishbow or Mr. Hoffman concerning how this extra $400 would be deposited, whether or not it would be deposited in a joint account? A. Not at all, not at all. There was a conversation with respect to the entire fund being deposited in a joint account.

Q. Now may I read to you—

Mr. Walsh: Page 4.

Q. (Continued) And does this refresh your recollection:

"Hoffman: (To Schulman) He wants to know 2061
whether you want to talk to him.

"Schulman: Explain to him"—then there are three dashes—"(takes the telephone) Hello. Since when do you want me to open a joint account in this case? Yes. You don't see why not? You mean you can tell a lawyer why you can't see why it shouldn't be a joint account? Why? For Christ's sake, this fellow Hoffman handled less than half a dozen assignments in his life, can see the point in two minutes and you can't after being years with Harry Rothenberg. I'm going to make distribution to my

2062 creditors, and the twelve hundred dollars you're going to be given a receipt for that. If I'm not no good in that regard, don't do any business with me. I'll tell you this much. If you ask any auctioneer with brains how to handle it"—and then there are some dashes, and then Hoffman says, "Wait a second."

Do you remember that? A. Read the next page and you will see that it refers to the entire fund of 12 and 3.

The Court: Answer the question. Do you remember that?

2063 The Witness: Yes, yes.

The Court: And then he will explain—just a minute. The question was, do you remember that. Do you or not?

The Witness: There was such a conversation in substance.

Q. And that joint account was for the $1200? A. No, sir. The next page shows the entire fund.

Q. I asked you whether the joint account was for the $1200? A. No, sir.

2064 Q. What was the joint account for? A. For the whole fund. 1200.

Q. What was the whole fund? A. $1500.

Q. That was the whole fund? A. Exactly.

Q. And the joint account was for the whole fund? A. Exactly. That is what he wanted, and I wouldn't give it to him because I owed my responsibility to creditors.

Q. I will read and continue:

"Hoffman: Wait a second, let me talk to him. (Takes telephone) Hello, Gabe, listen. I tell you what. I think it would be all right to get the re-

ceipt from Schulman and then in connection with 2065
the four hundred that he is holding—wait a second now—the four hundred that he'd be holding, together with whatever allowances would be made out of the twelve hundred, then we could all meet at a certain time and distribution would be made."

Now does that refresh your recollection that the joint account was for the $400 so that you would have control of it, so that you could make distribution when you all met together? A. No. Read the next page and you will see that we would all sit down at the table and divide the 1500. Hoffman thought we should get 1600. 2066

Q. So that doesn't refresh your recollection concerning the joint account, that that was for this $400? A. Not at all. It doesn't say so at all. The next page will show I am—that you are absolutely wrong in your interpretation, Mr. Walsh.

Q. Then do you remember—

Mr. Walsh: This is on page 5, Mr. Fielding.

Q. (Continued) You said:

"Schulman: Hoffman said first: "I don't know what to say," and then: 2067
"Schulman: If he don't trust Martin Goldman or me or you, tell him to go to hell. That's all."

Do you remember saying that? A. I may have said that.

Q. Did Wishbow want a joint account for the $400? A. Not at all. Wishbow was only interested in getting an advance payment on his fee and disbursements.

Q. He did not want a joint account at all? A. It wasn't his function even to recommend it.

Q. I am not talking about for the main fund, the $1200. I am talking about the other fund, the $400 that was go-

2068 ing to be divided among the three of you. A. If you read—
Q. Is that correct or is it not correct? A. It is absolutely incorrect, and the reading of that page shows it. All he wanted was an advance of his disbursements and of his fee and I said I wouldn't give it to him.
Q. Then subsequently—

Mr. Walsh: On page 5.

Q. (Continued) So that you will get the contents, and was this conversation had between you and Mr. Hoffman and Mr. Wishbow over the telephone:

2069 "Schulman:"—or I will start:

"Hoffman: (Over the telephone) Gabe, I think it will be all right. You know"—three dashes—"Wait a second, you can't dismiss the petition one, two three. You got to make a motion in order to show cause, so it still will take two days, right? Yes. I don't know what to do. You better straighten it out with him. He says that he will pay you the disbursements and also a certain amount. Wait a second.

"Schulman: I don't take any credit for myself. I told him the other day sitting there at the table with
2070 you"—dots—"he wants to be a"—three dashes—"let him be."

And the next:

"Hoffman (Over the telephone) You hear what he said? He said the same as he told you. He said there isn't any fixed amount that you're to get above your disbursements."

Do you remember that? A. Certainly, but you also left out where I said—

Q. I will read that. A. No, you left out a page or two before. 2071

Q. "that lie and Martin Goldman and you and myself will sit down at a table when this thing is disposed of; and that will all be gone over and you'll be satisfied."

Do you remember that conversation? A. Sure, sure. In other words, I didn't fix any fee or any amount. As soon as we'd have the 15 or $1600—I said 15 all along; that was my understanding, and Mr. Hoffman tried to make it 1600—we would sit down at a table and figure out what his legitimate expenses were and what fee, if any, he is entitled to. That is all there is to, but you still left out a page before where I said that I cannot open a joint account for this entire fund because I would be dismissing the petition in bankruptcy and then when I would have to make distribution to creditors I would be tied up with a joint account and I would be at the mercy of Mr. Hoffman to sign checks with me. 2072

Q. And then further on, in the same conversation:

> "Listen, as far as I'm concerned, here's the way it was explained to me. First, wait a second. The disbursements are paid in full? Hello. The disbursements are paid in full. Then after that Martin Goldman and Schulman and myself are to get an equal share. Before we divide that three ways, you are to get a reasonable amount for the services which you rendered as an auctioneer. In addition to the disbursements, and that will be argued out over the table. Hello. Is that satisfactory? All right then. It's all right to get the receipt for the bill of sale? All right." 2073

And evidently the telephone conversation ended.

Now does that refresh your recollection that there was going to be a joint account and that Wishbow wanted a

2074 joint account for the second fund? A. You're misreading the—no. The answer is no. You're misreading the entire paper.

Q. That's enough. A. If you will read before that question you asked me you will find Hoffman asked him and he wants to make sure that you will get your disbursements and your fee, nothing else, and there was no suggestion by Wishbow of a joint account on the $400 or $300.

Q. And then subsequently:

"Schulman: I'll sign the first part and he'll sign the last part, and you can make it in triplicate."

2075

Do you remember that? A. That's my receipt.

Q. That is the receipt dated April 26, 1937? A. Dated April 26, 1937; that is right?

Q. Where you turned over that bill of sale to him, is that correct? A. No.

Q. Or he turned it over to you? A. To hold in escrow showing—

Q. Did you find the original bill of sale yesterday? A. They showed it to you yesterday.

Q. No, they did not. A. They didn't?

Q. Have you got the original of that? A. The last I

2076 know I gave it to Mr. Fielding.

Mr. Walsh: Have you got that?

(Paper handed to Mr. Walsh by Mr. Fielding.)

Q. Is this the original— A. It is.

Q. —bill of sale? A. It is.

Q. And "L. Wein," in whose handwriting is that, do you know? A. I don't know.

Q. Did you write it in? A. No, sir, that is not my handwriting.

Q. Did you tell Mr. Hoffman to write it in? A. No, sir.

Q. Did you tell Mr. Hoffman that L. Wein was the pur-

chaser? A. I did not. Quite on the contrary. Mr. Hoffman told me that he got— 2077

Q. Just a second. Will you wait? A. I am answering the other question. Quite on the contrary. Mr. Hoffman told me—

Q. You said that is not in your handwriting? A. That is right.

Q. That you did not sign it? A. That is right.

Q. And that you did not tell Mr. Hoffman to put in "L. Wein"? A. That is right.

Q. "Schulman: I'll sign the first part and he'll sign the last part, and you can make it in triplicate.

"Hoffman:"—three dashes—"I mean call him up anyway. 2078

"Schulman: I think his name is Louis Wein."

A. That is right.

Q. And you did not tell Mr. Hoffman to put "L. Wein" in that bill of sale? A. No. He was going to call up Phil Cohen to make sure that it is L. Wein.

Q. Well, you heard Mr. Abramson on the stand and he said that he used the name "L. Wein" on occasion? A. No question about it.

Q. And you knew that, didn't you? A. No. 2079

Q. Well, you knew his name on April the 26th, that L. Wein was supposed to be a buyer? A. And don't you see where Mr. Hoffman said, "I'll call up somebody"—

Q. Is that correct? A. —to find out if his name is L. Wein.

Q. And what did you say? You knew his name was L. Wein? A. No, sir. If I knew it I wouldn't have to call up anybody.

Q. Well, that is what you told him, didn't you? A. It may be after the telephone conversation.

Q. It was after the telephone conversation. A. All right.

2080 So after he got that name from Phil Cohen I said, "Yes, it may be L. Wein."

Q. "I think his name is Louis Wein." Is that your explanation? A. I don't give you an explanation. I am giving you—

Q. Well, I am asking you for one, sir. A. An explanation of what?

Q. How it happens that on that receipt or the bill of sale dated April the 26th, 1937, the name of L. Wein appears. A. The minutes—they seem to indicate that he called up somebody to find out whether the name is L. Wein, and then when I got it I said, "Yes."

2081 Q. Well, did you know that L. Wein was Abramson? A. No.

Q. You never knew that prior to this trial? A. No, I don't think so; no.

Q. You never did? A. Prior to this trial?

Q. Yes. A. Oh, during the last two or three years, I heard, especially after the telephone conversation, I was rather informed of that fact.

Q. Were you amazed when you heard that Abramson was Louis Wein? A. That's an unfair question. I can't answer that. Mr. Abramson is not L. Wein.

Q. Who is L. Wein? A. Who is L. Wein?

2082 Q. Yes. A. L. Wein is an individual whose name Mr. Abramson, from what I gather, used in making certain purchases of articles.

Q. And did you know that on April the 26th, 1937, that Abramson used that name "L. Wein"? A. After the telephone call was made by Hoffman I knew it.

Q. But you did not know it before that? A. I don't think so, and I didn't know that he wanted it in that name or any other name until Mr. Hoffman called up and found out.

Q. Well, the transcript reads—

Mr. Walsh: On page 6, Mr. Fielding. 208

Q. (Continued) "Schulman: I'll sign the first part and he'll sign the last part, and you can make it in triplicate.

"Hoffman:"—three dashes—"I mean call him up anyway.

"Schulman: I think his name is Louis Wein."

He did not make any call before you said, "I think his name is Louis Wein"? A. I don't know whether he made a telephone call. I think he did.

Q. Well, you saw these notes, Mr. Schulman? A. I know, but these notes are dots and dashes. There may have been— 208

Q. In other words, do you think, and is your testimony to the effect now, that Hoffman did call up somebody and then he got an answer and then you said, "I think his name is Louis Wein"? A. That is right, that is right.

Q. But you are the first one in this transcript that mentions the name "Louis Wein"? A. Well, he said he was going to telephone and he did telephone.

Q. But he didn't telephone the office directly— A. Oh no, it doesn't say that he did or did not phone.

Q. Well, does it refresh your recollection at this time that he did make a telephone call? A. It refreshes my recollection that if I have Mr. Abramson as the buyer and I know Louis Wein, he did not have to make any telephone call about it. 208

Q. Well, you did know L. Wein, didn't you? A. No.

Q. And that Abramson was L. Wein? A. No, sir.

Mr. Walsh: Do you want to call the calendar now, sir?

The Court: No, sir. I want to go on with this witness for a while.

2086 Q. You were mentioning some of the tricks that you knew concerning auctioneers. Did you ever hear them put in a fictitious bid or a bid under a fictitious name for the purpose of cheating a legitimate creditor? A. No, sir.

Mr. Corbin: Just a moment.

Mr. Walsh: I asked him if he ever heard of it.

Mr. Corbin: All right, he has answered it.

Q. By the way, did your creditors know that you were going to withdraw the petition in bankruptcy? A. They told me—they certainly did. They heard me say so before
2087 Judge Coxe. We spoke about it before we went over to Judge Coxe. That was their original plan. That was their only plan.

Q. That was on April the 5th? A. That is right.

Q. Is that correct? A. That is right.

Q. And do you remember the date when the petition was actually withdrawn? A. May the 12th the order was signed, or May the 13th, and after that the creditors were notified that it had been withdrawn or dismissed.

Q. Did you— A. And my clients sent me signed consents of the 40 per cent settlement with full knowledge of the entire plan of respecting a 40 per cent settlement. I have
2088 those consents.

Q. And did you notify them—in other words, if my memory serves me correctly—and correct me if I am wrong—you just said that you told the creditors that you were going to withdraw this petition on April the 5th when you were before Judge Coxe, is that correct? A. I didn't say that at all.

Q. All right. Now when was the first time after April the 5th that you told your creditors, Schwartz & Zuckerman and Mantis, that you were going to withdraw the petition in bankruptcy? A. What is the question, the first part of it?

Q. (Read) A. Some time in the latter part of April, 1937. 2089

Q. And it was before May the 13th? A. Oh, sure.

Q. And did you get those consents from your clients prior to the time that you withdrew the petition in bankruptcy? A. No. Those consents were enclosed with a letter that is in evidence, that I think is dated either May 9th or May 13th, which explains that steps are being taken or have been taken to vacate or withdraw the bankruptcy, to withdraw the assignment, and that a 40 per cent is in the offing. That letter had with it enclosed a consent. They signed it and returned it to me—returned the consent to me.

Q. And on occasions I presume that you would tell the 2090 creditors what was happening? A. Yes.

Q. And you also told the creditors that you were going to make a motion or a motion was going to be made to dismiss the involuntary petition in bankruptcy? A. I don't think I told them in so many words. I may have told them substantially that we will withdraw the bankruptcy and withdraw the assignment so that a settlement—

Q. In the firm of Schwartz & Zuckerman whom did you have most of your conversation with? A. Mr. Schwartz.

Q. And in the other firm? A. Mr. Mantis.

Q. Mr. Mantis? A. Yes.

Q. And did you also communicate with Mr. Kreiselman? 2091 A. I don't think I did.

Q. Whose client was he? A. He simply fell in line with Schwart & Zuckerman and Ribach & Mantis in opposing Hoffman from continuing with his assignment, in trying to get him to cooperate towards getting a substantial and prompt settlement, and failing to obtain that cooperation from Mr. Hoffman, he joined with these two creditors and Mr. Levy in filing a petition and agreed with these creditors in having it withdrawn so that this 40 per cent settlement could go through.

2092 Q. Now prior to the filing of the involuntary petition in bankruptcy and prior to the time that you signed the involuntary petition in bankruptcy as attorney for Schwartz & Zuckerman and Mantis, did you have a conversation with Teddy Goldman? A. Yes, certainly. I testified to that yesterday.

Q. Will you tell us now what that conversation was? A. I told him that my people had called me up on the phone and told me that they had sent over different people to the store to look at the stock, appraise it and bid on it, but that whenever they called up Mr. Hoffman to find out whether he would take further steps to effectuate the original
2093 plan of having a settlement, rather than to go through with the assignment, that he was not in and failed to call them back; that they had these disappointing experiences with Mr. Hoffman for at least three or four or five days. I told him further that I had called up Mr. Hoffman on or about April 2, 1937, and that I had a similar experience in that he was supposedly out or not in and never called back, and that my people wanted to file a petition in bankruptcy against Mr. Hymowitz so as to prevent Mr. Hoffman from further carrying on the assignment proceeding to which they objected, and I asked him whether his client would be
2094 of the same mind, whether he would join these creditors in an involuntary petition in bankruptcy.

Q. Is that all? A. And he said he would find out and he would call me back.

Q. And did he call you back? A. Sure, he did.

Q. And what did he tell you? A. And he said his client would join my creditors in stopping Hoffman from proceeding with the assignment and throwing it into bankruptcy unless there was a settlement effected.

Q. Did he mention Kreiselman? A. Who?

Q. Teddy Goldman.

Mr. Fielding: Your Honor, this has all been gone through several times. 2095

Mr. Walsh: No, if your Honor please.

The Court: I don't remember that question.

Mr. Walsh: It was not.

The Court: I don't want to go over anything that has been gone into. But I will overrule the objection to that particular question. I don't recall it.

A. I mentioned Kreiselman to Teddy Goldman in that my creditors told me that A. Kreiselman & Son would join—

Q. Go ahead. A. In that A. Kreiselman & Son, according to my creditors' information to me, or my clients' information to me, would join them in the involuntary petition. 2096

Q. When did you first find out about the relief tickets, Mr. Schulman, that were going to be into the estate?

Mr. Fielding: I object to the question.

The Court: Yes. I will sustain the objection. That was gone into yesterday on cross examination.

Q. Well, you knew on April the 20th, 1937, that there were relief tickets? A. That's right, sure.

Q. And this is only as $1200 to L. Wein? A. This what?

Q. This bill of sale. A. The bill of sale covered stock and fixtures only, and the receipt——this bill of sale was turned over to me. It is dated April 20th, but it was given to me on April 26th. The bill of sale covers stock and fixtures only and then there is a separate paper which Mr. Hoffman gave me with respect to the food tickets. He even said on April 21 in the minutes—he said, "I'll try to type some kind of a receipt or a method of collecting the $300 relief tickets because they were non-transferable, non-assignable." That is what he said in the minutes of April 21. 2097

Q. Do you remember yesterday at page 597 I asked you this question:

"You say that Theodore Goldman drew this petition, being Government's Exhibit 3," which was the petition in bankruptcy. "A. I didn't say that. I told you he handed me it to sign. Whether he or X Y Z drew it up, I don't know. I told you that before."

And then the next question, I said, "I am sorry." And then you said, "Well, I accept your apology."

Do you remember that? A. Yes.

Q. And then do you remember this question was also asked you: "Who is the legal draftsman," referring to the petitioner? A. That is right.

Q. The petition in bankruptcy. And you said, "Theodore Goldman, I say he did it."

Mr. Corbin: If your Honor please, only in the interests of time saving—

The Court: Are you fixing a predicate to impeach him? If not, I don't want to go over what he has testified to already.

Mr. Walsh: It is impeaching it, and I have one more point.

The Court: Very well, I will overrule the objection at this time.

Mr. Corbin: He is just reading him his testimony of yesterday.

Mr. Walsh: It is impeaching—

The Court: Well, you need not read yesterday's testimony. The jury recalls what he testified to on cross examination yesterday or at least it is their function to remember, and they will recall what he testifies to this morning, so I am not going to permit you to read all of your cross-examination.

Mr. Walsh: No, I didn't intend to. Just one more point, if your Honor pleases. 2101

The Court: Very well. We will recess this case until 11 o'clock. The jury may be excused until 11 o'clock while we call the criminal calendar.

(Short recess.)

Mr. Corbin: If your Honor please, the cross-examination has been more protracted than we expected. We have here a witness who has come from Chicago and he wants, if possible, to take the one o'clock plane back to Chicago.

The Court: Is there any reason, Mr. District Attorney why we should not hear that witness out of order? 2102

Mr. Walsh: Absolutely not.

The Court: Then I will take him now, Mr. Corbin, if you wish.

Mr. Corbin: Thank you.

(Witness temporarily withdrawn.)

SEVERIN FRANCIS SCOTT, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Corbin:

Q. You are a lawyer? A. No, sir, I am not. 2103

Q. What is your business? A. I am the travelling representative of the Attorneys National Clearing House, a law list approved by the American Bar Association.

Q. You are in attendance now at some convention in Chicago? A. Yes, sir, the Commercial Law League of America.

Q. You flew here from Chicago to testify in this case and you would like to leave on the plane at one o'clock to Chicago? A. Yes, sir, 1.05, to be in time for the final dinner.

Q. We have been talking about the Hymowitz matter

2104 here. Did you have to do with that in any connection? A. Yes, sir.

Q. What? A. I represented Endicott-Johnson, through the corporation I worked for or was vice-president of.

Q. And did a time come when you heard about a proposal of 40 per cent to the creditors, by way of bulk sale of the assets? A. Endicott-Johnson got a notice of the bulk sale of the assets of Hymowitz for 40 cents on the dollar.

Q. And what was your attitude as to that, representing Endicott-Johnson? A. That we would take the 40 cents, as we do in any case, but without a release. We don't give a release. We always have a no policy compromise,
2105 except in very few cases.

Q. So following your client's general policy with respect to accepting settlements, but not giving a debtor a release, you got in touch with somebody or made some move in the Hymowitz matter; now what did you do? A. When I got that notice I called up Mr. Hoffman and told him—

Q. Is that Robert Hoffman, the attorney for the assignee? A. Well, the attorney for the debtor and the assignee, that s right, he represented both.

Q. Tell us what you said to him. A. I called him up, and I told him I would not take a settlement and give him a release. He asked why. I said because he had
2106 been down to Endicott-Johnson's and promised to return the shoes. At the time Hymowitz bought the shoes, Hoffman knew he was insolvent and therefore we were entitled to get the shoes back.

Q. What was the amount of your claim? A. About $230 or $235.

Q. All right. Is that all that was said at that time? A. On the phone Hoffman had said he would work out something whereby we would either get a settlement—or rather, he told me on the telephone "I will think that over." I kind of forget now because I had two conversa-

tions with him. The first one he said he would try to work out something that would satisfy Endicott-Johnson but first wanted to protect Hymowitz, who was at that time in jail, I think. 2107

Q. Thereafter did you make some motion in court? A. On behalf of Endicott-Johnson, Isadore Siegel made a motion to remove the assignee and the attorney for the assignee, because they admitted they represented the bankrupt. I think he was dismissed from bankruptcy at the time and Siegel got that information from a petitioner, that he represented him. One represented the wife and the other the husband, which way it was I don't know. That is about three years ago. 2108

Q. You made the application to remove the assignee? A. Yes, sir.

Q. And that was Kolman, the assignee, do you recall? A. That is right.

Q. And upon what ground did you make that application? A. I just told you because he represented the debtor Hymowitz, and he was not the proper man to represent the creditors.

Q. That Hoffman was not the proper man? A. Mr. Hoffman and Kolman both represented Hymowitz and the debtor's wife.

Q. Did that motion come on to be heard? A. I think it was adjourned. 2109

Q. And did a conference occur somewhere with respect to that motion? A. Well, it was adjourned. I don't know the exact date it was adjourned to, but it was adjourned to a day or two after Decoration Day. The reason for the adjournment was because a conference was called at Goldman's office, and Teddy Goldman asked me to come over there.

Q. Did you go? A. I did.

Q. When you got there who were present at the con-

2110 ference? A. The auctioneer Wishbow, Kolman, Hoffman and Theodore Goldman.

Q. And yourself? A. Yes, sir, when I got there.

Q. And will you tell his Honor and the jury what the talk was among you gentlemen there? A. Well, Teddy Goldman tried to sell me the idea that 40 per cent would be the best we could get out of it, and he did sell it to me. He said, "What do you want?" I said, "I will take 40 per cent, without a release." We were not going after Hymowitz then because I understood he was in jail. I said "I think he has got some money and according to the way we look at it, he has got assets, but we will
2111 go after him." I said, "We will take the 40 per cent and give the creditors the 40 per cent, we will dismiss the thing and go after Hymowitz when he comes out of jail."

So Hoffman said, "No one will give it to you." I said, "Why?" He said he represented Hymowitz. I said, "That is the reason you are double crossing the creditors, when you are representing Hymowitz and when you are representing the assignee. I think you are a shyster, and I am going to 44th Street and have you removed."

Q. What is that, 44th Street? A. The Bar Association. I got hold of Teddy Goldman and Teddy Goldman asked
2112 me down. He said, "What will you do if liquidated under an assignment?"

I said, "It is all right with me, but these fellows cannot liquidate. I cannot trust them." We argued there for some time, and he said, "What do you want?" I said, "I want somebody to sell the assets so when they are sold the creditors will get all that is coming to them." I felt that Hoffman was representing the debtor, and he would not give the creditors a break, no attorney would.

He said, "What else?" I said, "I want them out of the picture.

Q. To whom did you refer? A. I wanted the auctioneer and Kolman and Hoffman, because as far as I knew then Goldman was not in the picture. At that time he was trying to reconcile the thing so as to make the best settlement for the creditors. 2113

Q. You mean at that time he meant—

Mr. Walsh: I object to what he meant.

The Court: Sustained. Let him relate the conversation, if any.

Q. What else was said? A. I insisted they step out of the picture entirely. Teddy Goldman then said "Why cannot we do it some way?" And I said "Hoffman was getting a fee as representing the debtor. Why get a fee this way? They would get the creditors' money. But any attorney you fellows back is all right with me. I want an auctioneer to sell the stock and the proceeds to go into the estate, to be accounted for." They would not do anything. 2114

Teddy Goldman said "Do you object to us?" I said, "No, it doesn't make any difference, but I will never stand for a debtor's attorney liquidating an estate. I never have and I never will.

Q. Mr. Hoffman has been a witness in this case. Page 250 of the record he testified to a conversation, and without reading it all, the substance of it was that there was some talk. He said that it was finally decided another auctioneer ought to be brought into the picture and that that would pacify this chap. Severance Scott, or Scott Severance, or whatever his name was, so that he could get his cut out of it by way of that. Previously he said there was some talk about giving Mr. Severance or Mr. Scott, $25 or $50 for him to withdraw that. Was there any talk or did you hear from any source at any time any suggestion by anybody that you be given 2115

2116 $25 or $50, or an other sum of money to withdraw your motion? A. I did not.

Q. Did you ask or demand in any respect or any manner any cut for your part in withdrawing that motion? A. I did not. In the first place, I could not get it—

Mr. Walsh: I object to that, "in the first place."

The Court: Objection sustained.

Q. Is there any truth in that? A. Absolutely not.

Q. And you had no interest in this case? A. Absolutely not.

2117 Q. It was you who suggested the other auctioneer, was it not? A. I suggested the auctioneer that did the work for Endicott-Johnson Corporation.

Q. And his name was or is what? A. Lipkowitz—Edward Lipkowitz.

Q. Was there talk about his advent into the picture increasing or not increasing the expenses? A. No, he was willing to do it without any cost because of the work he got from the Endicott-Johnson Corporation.

Mr. Corbin: Thank you.

Cross examination by Mr. Walsh:

2118 Q. What corporation did you represent, Mr. Scott? A. The Endicott-Johnson Corporation.

Q. I mean the corporation with which you are connected. A. The Constructive Adjustment Company.

Q. That is a collection agency? A. That is right.

Q. And what was your function there? A. Vice-president in charge of the New York office.

Q. What were the duties of this collection agency? A. Collecting accounts of various creditors we represent.

Q. And if any legal action had to be taken would you confer with the attorney? A. No. The creditors would hire the attorney.

Q. Who is Siegel that you mentioned? Did you hire him? A. Siegel is an attorney on a law list that handles Endicott-Johnson's accounts and handles it today and when they see fit to send it to him. 2119

Q. Did you recommend Mr. Siegel to Endicott-Johnson, that he make this motion? A. I did not.

Q. You related what you knew to Endicott-Johnson Corporation and they in turn went out and got Siegel? A. They have him, the arrangement is that when they have any legal matter they say who the attorney is that it is to be given to. Even today there is an agency in Boston that handles their stuff, but it is given to Siegel right away, if it is a legal matter. 2120

Q. How long have you known Martin Goldman? A. 15 or 18 years.

Q. And how long have you known Theodore Goldman? A. Oh, I think about 10 years, maybe.

Q. Do you know Jacob Schulman, too? A. I met him.

Q. How long ago? A. I don't know exactly, but probably since 1932 when this corporation was formed.

Q. And on occasions, because of your collection work, I presume you have had dealings with Martin Goldman and Theodore Goldman? A. Claims have been sent to them.

Q. Did you recommend them? A. No. Endicott-Johnson has the law list and they take the attorney from that list. 2121

Q. You said a few moments ago that you didn't know Martin Goldman was in the picture until when? A. At that conference, when it was almost over, when they suggested something as to lawyers and I said "No attorneys representing creditors," and then they told me they had a retainer as co-attorneys.

Q. Was Mr. Siegel at this conference? A. No.

Q. You were representing Mr. Siegel? A. No, just representing Endicott-Johnson Corporation.

2122 Q. Mr. Siegel was the man who made the motion? A. He was the attorney.

Q. He didn't attend the conference? A. No.

Q. That was your function? A. Well, the credit man's or mine.

Q. Where was this conference held? A. In Theodore Goldman's office.

Q. Do you know when? A. I should say a couple of days before, a day or two before the case was to come on.

Q. In other words, the return day of the motion? A. That day or the day before; I think it was the day before.

Q. How did you happen to go up to Theodore Goldman's
2123 office? A. He called me on the telephone.

Q. What did he say to you? A. He asked me to come over there, that he had Kolman and Hoffman and the auctioneer down there.

Q. For what purpose? A. To discuss the question of the motion that Siegel had made. In other words, why Endicott-Johnson Corporation had made it, and if we could not work it out so that the creditors got the best settlement, which was 40 cents on the dollar.

Q. At that time it was 40 cents on the dollar? A. Yes, sir.

Q. You said that Teddy Goldman sold you the idea that you should withdraw this particular motion, is that
2124 correct? A. He sold me the idea?

Q. Isn't that what you testified to on direct? A. No.

Q. What idea did he sell you? A. That the 40 per cent was the best we could get in view of the assets and liabilities.

Q. Well, was it decided at that conference that the motion would be withdrawn? A. No.

Q. It was never argued, the motion on the return day? A. After they arranged for the auctioneer to go in there, then it was decided to withdraw the motion.

Q. After the conference it was then decided to with

draw the motion? A. Well, we were in there and the auctioneer came in, they had to bring him in to ask him. I called him up and brought him over there. 2125

Q. What is his name? A. Edward Lipkowitz.

Q. Was this at this conference? A. I only had one conference at Teddy Goldman's office, the only time I was there.

Q. A couple of days prior to the motion it was decided to call up someone? A. Yes, sir, that is right. I called up someone at Endicott-Johnson Corporation, and it was agreed that we should let it go through assignment, because we could sue the debtor in February, after he got out of jail, and probably collect the balance. 2126

Q. Now, did Theodore Goldman tell you that the firm of Goldman, Malter & Goldman were going to be retained as attorneys at that time? A. At that time, that is why I consented to it. He said "We have a retainer."

Q. They were all retained? A. I figured that happened before I got over there.

Q. It was the same day that they were retained? A. I never saw the retention, I don't know.

Q. They just told you that? A. Yes, sir.

Q. Was Martin Goldman at that conversation? A. No, sir. 2127

Q. Did you ever have any dealings with Martin Goldman? A. In this matter?

Q. Yes. A. No, sir.

Q. Did you ever have any dealings with Martin Goldman in any other matter? A. I discussed many matters that we sent to his firm, regular collection matters, that a client had sent. That we discussed with him. In other words, we sent matters to the Goldmans if they were important. Small matters we never did.

Q. On that occasion and after calling Endicott-Johnson it was decided at that conference you would dismiss the

2128 motion? A. Yes, sir, if the auctioneer went in, and an attorney representing the creditors went in as co-attorney, the motion would be dismissed.

Q. And at this time you deny that Mr. Teddy Goldman told you that he would give you $50 if you would withdraw the motion? A. I would spit in his face if he did.

Q. You withdrew the motion that day? A. I don't know how it was withdrawn, legally.

Q. Nobody appeared on the return day? A. Siegel took care of that. I phoned Siegel right from the office. I don't know how it was done.

2129 Mr. Walsh: Thank you.

Redirect examination by Mr. Corbin:

Q. There has been something said about Teddy Goldman stating his idea that 40 per cent was fair to the creditors. A. Yes, sir.

Q. You had made some inquiry or some investigation yourself about the stock and the situation of that estate, had you not? A. Yes, sir, that is right.

Q. In fact—

Mr. Walsh: I object to these leading objections.

2130 The Court: Objection sustained.

Mr. Walsh: I would like to hear him testify himself, the witness.

Q. Were you ever in the store of Paul Hymowitz? A. Yes, sir, I was.

Q. Did you see the stock in that store? A. I did.

Q. Did you know and have experience with stocks of that general character, in the course of your business over the years? A. Yes, sir.

Q. And did you know and had you heard that many times—

Mr. Walsh: I object to this as being leading. 2131

The Court: Yes. Objection sustained.

Mr. Corbin: I don't know any other way to qualify an expert.

Mr. Walsh: Ask him his experience.

The Court: He can tell you. But I say that was a leading question.

Mr. Corbin: Well, I suppose everybody knows just what it was going to be before it was finished. But let me ask you this. I will take one other try at it, your Honor.

The Court: All right.

2132

Q. Did you or did you not in your experience, prior to April of 1937, see such stuff sold and know prices that were paid for such stuff both at public auction and private sale in and about the City of New York? A. Yes, sir.

Q. And from that experience what in your opinion was the fair sales value of—

Mr. Walsh: I object, your Honor—

Mr. Corbin: I have not finished the question.

Q. —of the stock in the Hymowitz store?

Mr. Walsh: I object. He has not qualified him as an expert yet. 2133

The Court: I will overrule the objection.

A. Well, I looked over the stock and the stock would probably bring I felt at that time about a thousand or twelve hundred dollars.

Q. So when you say that Teddy Goldman sold you the idea that 40 per cent was all right, you also had some idea of the value of the stock yourself? A. Well, what I meant by that was this, that the thousand dollars or the twelve hundred dollars that would bring, from the figures I had at that time, that would have brought at least 40 or 50

2134 per cent, but when a thing is all gotten together, the additional claims of money, loan claims, would not have brought that, or that amount of money and therefore Teddy Goldman figured that even if we didn't give a release, that 40 per cent would be more than we could get any other way. He explained to me how the debtor was in jail and we could never collect.

Q. You felt that was fair? A. Yes, sir, as far as the other creditors were concerned, but not as far as Endicott-Johnson were concerned.

Recross examination by Mr. Walsh:

2135 Q. Were you at the sale when the stock was sold? A. Yes, sir.

Q. How much did it bring? A. I don't know. I didn't tabulate the assets.

Q. Would it refresh your recollection if I told you it brought about $1500? A. Yes, sir, that is right, about that.

Q. And how long have you been evaluating the value of merchandise, how many years? A. Sixteen years.

Q. Is it your duty for Endicott-Johnson to find out how many pairs of shoes they have? Are you an expert in shoes? A. In shoes more than anything else.

2136 Q. And approximately how much per cent of the goods at Hymowitz's store were shoes? A. I don't recall right now.

Q. Approximately. A. I couldn't make a figure. I would not be able to tell the truth. That happened several years ago. I don't know the number of shoes. I know $1500 surprised everybody.

Q. They did get $1500? A. Yes, sir, that is the reason, because of this fight.

Mr. Walsh: That is all.

(Witness excused.)

JACOB P. SCHULMAN, resumed the stand. 2137

Cross examination continued by Mr. Walsh:

Q. Do you remember yesterday, Mr. Schulman, I was talking about a conversation that you had on the telephone on April 7th, 1937, I am reading from page 688 of the record:

"Mr. Fielding: That isn't the finish of the sentence.

"Mr. Walsh: I am sorry.

"Q. (Continuing) 'I figured Goldman would get thirty-three hundred for it.' Does that refresh your recollection? A. That refreshes my recollection to a point of definiteness 2138
and positiveness that there was no mention at all about $3300 in the Hymowitz case.

"Q. Was there any mention of $3300 in the Needleman case? A. Might have been because—

"Q. Well, was there? A. I think so. He had a $600 stock"—

The Witness: $6000 it should be.

Mr. Walsh: $6000.

Q. (Continuing)—"Q. So now you are definite"—

Mr. Corbin: I object to just reading what the 2139
witness testified to.

The Court: I am going to allow him to finish this question and see what it is, first, Mr. Corbin.

Q. (Continuing) "Q. So now you are definite that this refers to the Needleman case? A. That is my best judgment, that it does refer to the Needleman case."

Do you remember testifying to that? A. Yes, sir.

Q. That was the conversation you had on April 7th, Mr. Schulman, on April 7th, 1937?

Mr. Corbin: I object to it, your Honor.

2140 The Court: Objection sustained.

Q. Well, we were referring to the conversation that you had over the telephone with a Mr. A, whoever he may be, and that was in response to that question when I asked you—

Mr. Corbin: I object to that.

The Court: Sustained.

Q. Did you say, or did you make those answers I just asked you about?

Mr. Corbin: I object to that as already having
2141 been asked.

The Court: Objection sustained.

Mr. Walsh: Now on Government's Exhibit 21-A, if your Honor please, I will have to go further, to see if it refreshes his recollection.

The Court: You can ask him anything you have not already asked him. He made those answers yesterday and the jury is supposed to remember the answers, and I suppose they do at least remember the substance of them. However, I am not going to permit you to read over the testimony. This case has got to be ended some time.

2142 Mr. Walsh: It will be ended very shortly.

The Court: I don't mean to cut you off, please understand that, Mr. Walsh. I don't want to cut you off. Any cross examination you have not gone into, I will allow you to go into it, but I am not going to permit you to read the testimony that he went over yesterday.

Mr. Walsh: I ask that this be marked for identification.

(Marked Government's Exhibit 23 for identification.)

Q. Now yesterday you said you represented the Mr. 2143
Needleman, the auditor and the president of the First 88 Cents Stores, Inc., is that correct? A. Yes, sir.

Q. And was Samuel W. Fisher the attorney for the petitioner? A. The attorney for the petitioner and creditors who filed an involuntary petition.

Q. Now I show you Government's Exhibit 23 and I ask you the date when that petition of the First 88 Cents Stores was filed. A. According to the stamp here, April 19, 1937.

Q. And that was after April 7th? A. Naturally.

Q. Well, is there any doubt in your mind it was filed on April 19th? A. No doubt at all. 2144

Q. And it was filed at 12.10 p. m.? A. Exactly, but before a petition is filed—

Q. Now I show you Government's Exhibit 23, it is an order to show cause, and I ask you whether or not that is your signature? A. It is.

Q. And this is in the case of or in the matter of the First 88 Cents Stores, Inc.? A. That is right.

Q. And the petition in bankruptcy was dismissed in this case also, wasn't it? A. It was dismissed by me against Mr. Fisher before Judge Patterson.

Q. For a jurisdictional defect? A. No.

Q. What was it dismissed for? A. Because the petition 2145
of the creditors didn't have claims aggregating $500.

Q. That is a jurisdictional defect? A. That the allegations in the pleadings were not as required by law.

The Court: 88 Stores?

Mr. Walsh: 88 Cent Stores.

Q. Wasn't the jurisdictional defect other than in the affidavit, instead of being over $500 that the claims of the various petitioning creditors were only $473.51?

Mr. Corbin: I object to that.

Mr. Walsh: That is a jurisdictional defect.

The Court: I sustain the objection on the ground that the document speaks for itself.

Q. You signed the affidavit in the 88 Cent Stores case, is that correct?

Mr. Corbin: I object to it. He already said he did.

The Court: I will overrule the objection.

A. Yes, sir.

Q. And Government's Exhibit 3, in Hymowitz's case, Robert Hoffman signed it? A. Apparently.

Q. And this was prepared by Teddy Goldman, is that correct?

Mr. Corbin: Referring to what?

Mr. Walsh: Referring to Government's Exhibit 3 in the Hymowitz case.

A. I said I signed it at his office.

The Court: Wasn't that gone over ten or fifteen times?

Mr. Walsh: This is Robert Hoffman.

The Witness: May I withdraw my answer?

The Court: That has been gone into a number of times. He admitted he signed it in Goldman's office, and that he didn't know when it was drawn.

Mr. Walsh: That is all.

Redirect examination by Mr. Fielding:

Q. I hand you the original of Government's Exhibit 8, and you will note that is a bill of sale for $1200? A. It is.

Q. In April? A. That is right.

Q. In which the name of L. Wein is written in by somebody? A. That is right.

Q. Well, you read a lot of items that were going to be given to that auctioneer for $1200— 2149

Mr. Walsh: I object to that as improper redirect examination. That has been gone into, and he has answered that twenty times.

The Court: Yes. My recollection is it has been gone into.

Mr. Fielding: It is in evidence.

Mr. Walsh: And I will concede it does not say anything about city sales taxes.

Q. And the letter, bill of sale for $1500 which is dated in May, contains a specific reference to the accounts payable? A. Accounts receivable. 2150

Q. And that item represents the food tickets? A. Yes, sir.

Q. You were interrogated about three sheets of paper executed in triplicate, one a receipt for a bill of sale, and one for food tickets, separately. A. Yes, sir.

Q. I show you a paper and ask you if you signed that? A. I did.

Mr. Fielding: I offer it in evidence.

Mr. Walsh: No objection whatever.

The Witness: I think it is in evidence. 2151

Mr. Walsh: Yes, that is already in evidence.

Mr. Fielding: I didn't know that was so.

Mr. Walsh: Yes, that is in evidence. Wait, I will check it up. Yes, they are all in evidence.

May I see that one for a second?

Mr. Fielding: Yes (handing to Mr. Walsh).

Q. Now I show you a paper and ask you if you have seen this before? A. A. I did.

Mr. Fielding: I offer that in evidence.

2152 Mr. Walsh: Well, if your Honor please, may I examine the witness preliminarily as to this?

The Court: Yes.

By Mr. Walsh:

Q. When was this paper given to you? A. Shortly after the registered letters were sent by the Dry Goods Association.

Q. There is no date on this letter? A. It was enclosed with that letter of May.

Q. Is there any date on it? A. I don't know.

Q. I show you and ask you whether or not you can tell
2153 me definitely when that was received by you. A. Yes, sir.

Q. When? A. Within about a week of the May, 1937 letter, which was sent out by the Dry Goods Association, which is in evidence in this case.

Mr. Walsh: Then I have no objection to it.

Q. It is not notarized? A. No.

Q. Should have been? A. No, sir.

(Marked Defendants' Exhibit D.)

The Court: Are you going to read it to the jury?

2154 Mr. Fielding: Yes, your Honor.

(Mr. Fielding reads Exhibit D to the jury.)

By Mr. Fielding:

Q. Now the document you just identified and which is now Defendants' Exhibit D, was attached to papers now in evidence and known as Government's Exhibit 15, being a letter from the Dry Goods & Furnishing Association to the creditors of Paul Hymowitz, dated May 13, 1937, and a notice about the sale, is that correct? A. Yes, sir.

Q. Now reference was made in your cross examination

to the fact that you spoke up about the landlord is entitled to a check? A. Yes, sir. 2155

Q. Will you explain what you meant by that?

Mr. Walsh: I submit that has been explained fully.

The Court: I overrule the objection.

A. The landlord is entitled to full payment as a priority creditor during the time the assignee was in possession of the premises in question.

Q. Was he the only one that was to get a check? A. All the creditors were to get a check. 2156

Q. Now have you any present recollection concerning the Needleman case with reference to filing that petition? A. Certainly.

Q. Will you explain it? A. Prior to the filing of the petition in bankruptcy some creditors were dissatisfied with the payment of 20 or 25 per cent. I think it was 20 per cent, in addition to the 60 per cent they thought they could get more.

Mr. Walsh: Can I get the date of that?

The Witness: It was about a week or ten days before the petition was actually filed. I think there was some dissatisfaction even before I got into the picture, because there was a meeting of the creditors at the Dry Goods Association and in order to meet any possible objection on the part of creditors, I was retained or employed in the case, so that whatever steps might have to be taken, in the event of filing a petition, or what not, or if the creditors wished an examination of the premises or of the stock, I could arrange those, and any other incidental detail. 2157

Mr. Fielding: That is all.

2158 By Mr. Corbin:

Q. One subject I want to ask you about. I call your attention to April 7th when Martin Goldman was in your office. Mr. Hoffman when he was here on the stand he said that—

Mr. Walsh: What page?

Mr. Corbin: Page 95.

Q. —in response to Mr. Schachner's question:

"Q. Did the defendant Morton M. Goldman stay until the end of the meeting? A. He did not. He said he was going
2159 to leave, and before he left Mr. Schulman asked him to wait outside. Mr. Schulman left the office, Goldman left the office, and some few minutes later Schulman came back.

"Q. And what did the defendant Schulman tell you after he came back? A. He told me that he spoke to Mr. Goldman, Morton Goldman, and had told him what Mr. Schulman had discussed with me, the time that I was last at his office, and he told me that Morton Goldman was afraid to speak before me, but that he was amenable to going through and that he would carry out whatever was agreed upon or arranged."

Did anything like that occur? A. No, sir.

2160 Q. Did you see in your examination of the FBI man's notes here anything indicating any such occurrences?

Mr. Walsh: I object to that. The exhibit speaks for itself.

The Court: Objection sustained.

Q. Did Martin Goldman say to you at any time that he was afraid to speak before Hoffman? A. Not at all. He spoke good and loud and plenty.

Mr. Corbin: That is all.

Mr. Walsh: May I have just one moment more, your Honor?

The Court: Yes. 2161

Mr. Walsh: No further cross examination, your Honor.

The Court: Stand aside.

(Witness excused.)

SAM RICH, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Corbin:

Q. Your age? A. 46.

Q. Residence? A. 2460 Davidson Avenue, Bronx.

Q. Occupation? A. Salesman at present. 2162

Q. Have you had experience in the past with the purchase and the sale of goods of the general character sold in an army and navy store? A. Yes, sir, I have had twenty years experience in that line. I had my own stores, and I am acquainted with the purchasing and selling of it.

Q. You are acquainted with stores that have such stocks in this vicinity we are referring to? A. I am.

Q. And that applies to 1937 and prior? A. Yes, sir, since 1919.

Q. Do you know Paul Hymowitz? A. I do.

Q. Do you know Mrs. Paul Hymowitz? A. Well, that was my sister; at that time she was Mrs. Paul Hymowitz. 2163

Q. In 1937, April, March, February, your sister was married to Paul Hymowitz, the debtor, is that right? A. That is right.

Q. Did you attend a family conference so-called of the Hymowitz family with regard to the stock—

Mr. Walsh: This is all leading, your Honor. I think the witness should be allowed to testify what he remembered.

The Court: I will overrule your objection to this extent; it is more or less preliminary.

2164 Q. —at 346 Bowery? A. I did.

Q. When? A. About two or three days following the conviction and sentence of Paul Hymowitz, my sister called me at my house. At that time I lived with my mother.

Q. Where was this conference held? A. 346 Bowery.

Q. In the store? A. In the store. A few days following the sentence. I was there merely to discuss what should be done with the stock, how we are going to operate the store and what should be done with it. So that was on a Sunday when she called me, and I said I will be there about one o'clock. I got there about that time, and started to take stock.

2165 Q. Now who was present? A. Mrs. Paul Hymowitz, his sister Ann, that is Paul's sister, my sister, who was Mrs. Hymowitz, my brother Charles and myself.

Q. Now what did you do in the store that afternoon? A. Well, I got in there about one o'clock and I started to take stock and during the course of the afternoon I was interrupted by some customers coming in, to whom I made a few sales, sold probably about seven or eight dollars worth of goods.

Q. Do you think this was on Monday? A. I think so, I am not sure.

2166 Q. Following the Sunday she phoned you? A. Yes, sir, I think so, I am not sure of that.

Q. It was late in March? A. That must have been four or five weeks after she was married, right after that he was convicted.

Q. Now when you say that on the afternoon you took stock, just tell us what you did. A. Well, I started to take stock, and when we take stock, we do it on certain boards, which we have, short cardboard boxes, and we take the sides off and lift the top or both sides up and we start to take inventory of everything. My brother assisted me. We three were talking about Paul Hymowitz, four of

us, his connections, etc., and I was taking stock all afternoon, with the exception of the time I went out to get a bite at about five o'clock. In the meantime his brother Sam, Paul Hymowitz's brother left about five o'clock. I remember Mr. Hoffman coming in. 2167

Q. Now is that Robert Hoffman, the attorney? A. Yes, sir, that is the fellow that was here.

Q. That was about five o'clock or thereabouts in the afternoon? A. Yes, sir.

Q. He came into the store? A. He came into the store. I was introduced to him. I had never met him before. He asked me "How is your stock?" I said, "I am not completed with it yet. I am taking an inventory of everything." After all my sister had got an interest in the business and I wanted to know what it is going to be. 2168

We were there until seven o'clock. In the meantime Hoffman asked me about the prices. I said, "You take out a file." There were two files, one a paid file and one unpaid.

Q. What do you mean by that? A. Paid and unpaid bills. Those prices you cannot find in the bills. I said to him, "You ask me, and I can tell you. I know this type of goods. I know where you buy it and know what you sell it for." Well, that went on until about seven o'clock.

Q. What went on? A. My stock taking. 2169

Q. That is from five until about seven o'clock? A. No, from about one to seven o'clock, it took me six hours.

Q. From five to seven Hoffman was there? A. Yes, sir, he was there from five until we closed up the place.

Q. And did he take down some figures and help you? A. Yes, sir, he helped me with the arithmetic. For instance four dozen shirts at $8.50, he would figure it out $34, or whatever it amounted to.

Q. Did you go through that complete stock and take an inventory of it? A. I took a thorough inventory of it.

Q. And was he, Hoffman, there during the last two hours

2170 of that work? A. Yes, sir, he was present right there.

Q. Now when you got through did you total it up? A. Yes, sir, we totalled up the figures, at cost prices.

Q. Who are "we"? A. Hoffman, I think my brother was present also, everybody there, in fact everybody that was there joined in and inquired about the figures and what did they amount to.

Q. Were they put down on paper? A. On the cardboard.

Q. And what became of the cardboards, by the way? A. The last I saw of them was when Mr. Hoffman took them with him.

Q. Now what was the total that you figured? A. To be
2171 correct, between eighteen and nineteen hundred dollars, at cost.

Q. That is what I was going to ask you. Did you figure the inventory at cost? A. That is correct.

Q. Taking the cost price from the bills, so far as they went—

Mr. Walsh: I object to counsel leading the witness. I think he should be permitted to say how he got the figures and how he arrived at the totals.

Mr. Corbin: I am just cutting it short.

The Court: I will overrule the objection.

2172 Q. How did you get the cost price? A. We took it out of the bills.

Q. And the total you say was what? A. Between eighteen hundred and nineteen hundred dollars, to be correct.

Q. Now that total cost was figured and totalled in Hoffman's presence? A. In his presence, in fact he helped me to get the totals, the right figures.

Q. Did he talk to you about it at the time? A. Yes, sir, sure.

Q. And you talked to him about it? A. Yes, sir, I was there, representing my sister who was Paul Hymowitz's wife.

Q. What if any conversation did you have with Mr. Hoffman at that time with respect to the value of the stock? A. I showed him after all we were discussing what to do with the store, it was a family conference and I said to Mr. Hoffman, "Here we have eighteen hundred or nineteen hundred dollars worth of merchandise." I appraised it to bring between eleven and twelve hundred dollars at a sale and before that we had a discussion about the relief tickets, and the relief vouchers. He said, "You must forget about the relief tickets because of the fact Paul Hymowitz went to jail, on the ground that he obtained these tickets by fraud, and the relief tickets are not worth the paper they are written on, because the City said he was going to contest them." That was that $500 worth of relief tickets.

Q. That is what he was talking about? A. Yes, sir, we discussed the best thing to do. I told him as far as my sister was concerned in this matter it is a matter of a short time before the creditors will close up the place, because if they get to know that the man is in jail they will sue him for goods sold and delivered and in addition to that I said, "How possibly could this woman go on with this store, I didn't know and one thing I didn't want to see my sister selling things on the Bowery to that element there."

We got down to figures. We also took from the files the amount of money due and came to the figure of twenty-three or twenty-four hundred dollars and I showed them if it does bring $1200 on the sale that where there are administration expenses that by the time you wolves get through with it the creditors are not going to get anything, probably wouldn't get anything, at most 30 per cent tops. I said the only thing to do is throw it back to the creditors, and I will show you the exact figures I showed him. I do remember that.

2176 Q. You are going to show us what you did and what you put down in your talk with Hoffman?, A. Yes.

Q. On that occasion? A. That is correct.

Q. All right, go ahead. A. I showed him that with liabilities there amounting to about $2400, and then I knew he had a loan there—we knew about the loan, about $200 to the National City Bank, he owed.

I said, "Let's say $2500." I says, "The stock will bring $1200, let's say, it brings a lot of money, $1200. You say the relief tickets are out. You will scratch that off." I said, "Administration expenses will be at least $400. That will leave $800. You owe $2500. By the time you get
2177 through," I says, "you will probably give 30 per cent to the creditors. We wash our hands of this," and the fact is my sister here who gave $500, gave Paul Hymowitz $500 at the time of the wedding as a dowery, we waived her claim too. I didn't want her to be called as a witness and so we washed our hands of it, and I showed them that they wouldn't get more than 30 or 35 per cent, and I know it for a fact. That is all they could realize.

Q. And that was the talk, the substance of your talk with Hoffman on the occasion? A. Oh, sure. I knew what this administration is in those matters. I know how that's
2178 worked, how it goes on. I have been in this business long enough.

Q. Did Mr. Hoffman on that occasion say anything about getting around 100 per cent for creditors? A. He couldn't say that when I showed him—I just showed him there was no moneys.

Q. Did he say anything about, 100 per cent or 80 per cent? A. Oh, no, it's impossible. Even Einstein couldn't figure that out.

Mr. Corbin: Your witness.

Cross examination by Mr. Walsh: 2179

Q. Your memory is pretty good, isn't it, sir? A. As far as that is concerned, yes.

Q. With whom did you speak about this case recently, Mr. Rich? A. Well, the first—the first person I spoke to this case was really Mr. Kandell. I had met him in the lobby, I remember, about four weeks ago at 175 Fifth Avenue where I had business with my factors, the Majestic Factors Corporation, who have an office at the same building, and in the lobby I met him and I said to him then—I do remember I says, "I know more about this"—I don't want to use the expression—I said, "I know more about this case than 2180 anybody else."

Q. Your sister was married to Paul Hymowitz? A. At that time. Since then she has an annulment.

Q. Because he was placed in jail? A. Correct.

Q. Your sister had a legitimate claim against the assets of that estate, didn't she? A. Absolutely.

Q. How much? A. $500, which he had gotten only four weeks before the liquidation, before he went to jail, I mean.

Q. And he had put that into the business? A. No, he didn't put that into the business. From what afterwards we found out, he did not. He took out a lot of money from the business. 2181

Q. Was he— A. Just a minute. I will answer that question. He went to defend himself on that charge of relief tickets and it cost him over $1000 which he gave to politicians and lawyers to fix the case, but the result was he went to jail. The business was solvent.

Q. Hoffman wasn't his attorney for that particular case, was he, when he went to jail? A. No, no.

Q. Who told you that? A. About the politicians.

Q. Yes, and the lawyers. A. My family knows about that. My family and his family knew it. We knew what caused his conviction. If the family don't know, who is going to know it?

2182 Q. You say you spoke to Mr. Kandell? A. I did, about four or five weeks ago, is the first time I heard about it—I knew about the case but I never came in contact with him.

Q. You never spoke with anybody about the case? A. That is correct.

Q. Until you spoke with Kandell about for or five weeks ago? A. That is correct.

Q. And at that time you gave him a statement? A. And I gave him a statement two or three days following that conversation. He says to me, "You have got to help me out of this matter."

2183 Q. What else did he say? A. He said, "Will you come up to my office?" And I asked him, "who is your lawyer?" And he says—I don't remember who he said. And he said, "Will you give me a statement?"

Q. You don't remember the lawyer? A. Yes, I do remember.

Q. What is his name? A. George Mintzer.

Q. Yes? A. And he said, "Will you give me a statement?" And I says, "Of course I will. I will do that for you."

Q. How much did he offer you for it? A. Me?

2184 Q. Yes. A. I volunteered my services. I know the man for 20 years.

Q. You know Kandell? A. For 20 years, since he worked for the Shirt-Craft Company, 20 years ago, as credit man there.

Q. Do you know Martin Goldman? A. Never met him.

Q. Theodore Goldman? A. Never saw him.

Q. Or Schulman? A. Don't know him.

Q. But you have known Kandell? A. 20 years I knew him.

Q. Were you ever arrested or convicted of a crime?

2185

Mr. Corbin: I object.
Mr. Walsh: I think that is proper.
The Court: I will overrule the objection.

Q. Have you ever been convicted of a crime? A. I have.
Q. What crime? A. Petty larceny.

Mr. Walsh: That is all.

Redirect examination by Mr. Corbin:

Q. When was that? A. In 1914, 26 years ago.

2186

Mr. Corbin: That is all.

Recross examination by Mr. Walsh:

Q. And you say that Kandell did not offer to pay you money? A. No, sir.

Q. To make this affidavit? A. I wouldn't take it under no circumstance. He didn't offer me, and I didn't take it.

Mr. Walsh: No further questions.
Mr. Corbin: That is all.
The Court: Stand aside.
(Witness excused.)

2187

HARRY LEVY, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Corbin:

Q. Mr. Levy, do you remember a man by the name of Paul Hymowitz? A. I do.

Q. By the way, what is your occupation? A. I am in the wholesale shoe line.

Q. And have been for how long? A. Well, I have been in this line for the past 20 or 25 years.

2188 Q. Located where? A. 122 West Broadway.

Q. Did you sell to Hymowitz? A. I did.

Q. And did a time come in March, 1937, when you noticed something in respect to his store? A. Well, I called on Mr. Hymowitz during the month of March, 1937, and I found his place closed and my account was pretty long past due, and it looked kind of suspicious to me a man to be closed during business hours. So I decided to turn my account over to collect.

Q. What was the amount of it? A. $260.

Q. What is that? A. $260.

Q. And did you go to some lawyer? A. Why, I called
2189 up Teddy Goldman and I told him that I want to give him this here account for collection and until I got back to my office he should investigate and find out why the store is closed during business hours.

Mr. Schachner: Will you please speak louder so that we can hear you?

Will you read what he said?

(Answer read.)

Q. Who was Teddy Goldman? A. Of Goldman, Malter & Goldman.

2190 Q. Had they acted for you? A. As my attorneys.

Q. For how long? A. They had been doing my work for the past seven years.

Q. Did Teddy Goldman, a member of the firm that you knew as Teddy Goldman, attend to your matters? A. Teddy Goldman was always taking care of my accounts.

Q. So you called him and talked to him, and what did you say to him? A. I told him that "Here's an account," that his place of business is closed and the account is long past due and I can't imagine what is wrong, he should find out if there's anything wrong.

Q. And then you went back to your office? A. No, I

called him back later in the afternoon because it was on 2191
my mind and he told me that he made an assignment to his attorney, that is, to Paul Hymowitz's attorney, and of course I didn't like the idea of him making the assignment direct to his own attorney.

Q. Did you tell Teddy Goldman it? A. I told Teddy Goldman why didn't he go over to his creditors, let him arrange a meeting if he is in difficulties, why doesn't he take it up with his creditors direct instead of going to his attorney. I said, "I don't know his attorney."

Q. And you hadn't had any notice prior to that time of any proposed assignment, had you? A. Not at the time when I gave him my account; after that, I did. 2192

Q. That is, when you called and saw the store closed that day—

Mr. Walsh: Now I object to these leading questions, if your Honor please.

The Court: Yes. I will sustain the objection.

Mr. Corbin: May I at least finish the question?

Mr. Walsh: No, I object to it because it is putting words in the witness's mouth.

The Court: I think you asked enough to determine that it is leading, Mr. Corbin.

Mr. Corbin: I have got to ask it in that form. 2193
Let me ask you, see if it is wrong, if there is anything wrong about it.

Mr. Walsh: Then the damage is done; you are telling him the answer.

Mr. Corbin: Oh, "damage," like the boy—

The Court: Very well. Proceed with your question.

Q. What I was going to ask you is this: When you called at that store and found it closed that morning, as you have testified to here, is that the first time that you

2194 heard or knew or saw anything which was different about that account? A. When I called on the store I found the store was closed. That was the first time that gave me a suspicion that there was something wrong, that the man's business was closed during business hours.

Q. After you spoke, as you say, to Teddy Goldman the second time on the phone about a creditors' meeting, a meeting of the creditors, what next did you hear? A. Well, I was told later on that on that a meeting of creditors was held.

Q. Who told you that? A. Teddy Goldman.

2195 Q. And tell us what he said to you. A. He told me a meeting of creditors was held and creditors asked—that is, Hymowitz's attorney, to turn over everything direct to the creditors and they would in turn try to dispose of everything—of the stock, and distribute whatever they realized from the stock for the creditors.

Q. And— A. (Continued) And as I understand, that he, Mr. Hymowitz's attorney, consented of doing it.

Q. Then what was the next you heard? A. Later on I heard that Hymowitz's attorney changed his mind. He refused to turn it over.

Q. And what next did you hear? A. After he changed

2196 his mind, why, they were talking about filing a petition in bankruptcy.

Q. Well, did Theodore Goldman call you one day about that? A. Why, Theodore Goldman called me and he told me that several of his—several of Paul Hymowitz's creditors "are filing a petition in bankruptcy, and the attorney that represents some of those creditors that are filing the petition" got in touch with him and they asked him if I want to join with him.

Q. What did you say? A. Well, I was one of the petitioners.

Q. And you did sign the petition? A. Yes.

Q. And after that what next did you hear? A. After 2197
the petition was signed, later on I heard that they were going to put the petition aside, that Paul Hymowitz's attorney finally decided to do what the creditors want him to do, and the creditors had a cash buyer to buy the stock and pay the creditors as much as 40 per cent, which I was willing to accept 40 per cent in full payment of my account.

Q. And you told— A. And I told it to Mr. Teddy Goldman.

Q. Well, what next did you hear? A. Later on I was told that a 40 per cent settlement could not go through. One of the creditors—I think it was Endicott-Johnson— 2198
refused to accept settlement and finally it had to go through the regular assignment proceedings on account of him refusing to accept a settlement.

Q. That's the way you understood it? A. That's the way I understood it.

Q. Did you get your 17 per cent on your claim? A. Well, I don't know how much—how much it worked out on percentage. I received some $43 and odd change about a year later.

Q. Did you get or did anyone promise you any money for anything? A. No, sir.

Q. For signing the petition in bankruptcy? A. No, sir. 2199

Q. You got nothing extra? A. No, sir.

Q. Nothing more than the regular— A. $43 and change.

Mr. Corbin: Your witness.

Cross examination by Mr. Walsh:

Q. You didn't get much out of the bankruptcy, did you? A. I did not.

Q. How much? A. That is all I got, $43 and some change.

2200 Q. And you refused to take it, didn't you? A. I didn't refuse to take it.

Mr. Corbin: You mean out of the assignment, not out of the bankruptcy, Mr. Walsh.

He got an answer "Yes" from the witness on the proposition that he got something out of bankruptcy.

The Court: I imagine that the witness meant that he got it out of the assignment.

Mr. Walsh: Whatever you want to call it.

The Court: From the assignment proceeding.

The Witness: I got it from the assignment pro-

2201 ceeding.

Q. You said it was in the latter part of March, 1937, that you happened to be down in the Bowery, is that right? A. Yes.

Q. Do you remember the date? A. I wouldn't remember the date.

Q. Well, at any event, you called up Teddy Goldman and said that the store was closed? A. I did.

Q. And then you said, "Call me back at my office and find out." Is that correct? A. No. I called him back later in the day.

2202 Q. And what did he tell you? A. He told me that there was an assignment made to his lawyer.

Q. And did he also tell you that he had attended a meeting of creditors on that same occasion? A. Not at that time.

Q. How long after did he call you up and tell you that he had attended a meeting of creditors? A. I wouldn't remember the dates.

Q. Well, how many more days had elapsed after you first called him up? A. I—I was always in constant touch about this case, but I really couldn't remember dates, if

it's a week or two; I wouldn't remember, I wouldn't remember it. 2203

Q. What is— A. I used to call up Mr. Goldman occasionally and I used to call at his office occasionally, but I couldn't keep a record every time I called him or called to see him.

Q. Well, Mr. Corbin asked you—well, what was the conversation you had with Teddy Goldman? A. When?

Q. When he told you that he had attended the meeting of creditors. A. Well, there was more than one meeting, that I presume.

Q. Who told you there was more than one meeting? A. Well, it was going one way and the other. 2204

Mr. Walsh: What is that answer?

(Answer read.)

Q. What was? A. Well, first he was supposed to—

Q. Who was? A. Mr. Hymowitz's attorney.

Q. Who told you that? A. Teddy Goldman told me. First of all there was a meeting. I don't remember when the meeting was and when the meeting took place. I haven't attended to any of the meetings.

Q. You never attended any meetings? A. No.

Q. When Teddy Goldman called you up the first time he told you that an assignment for the benefit of creditors had been filed? A. When I called up Teddy Goldman that same day, later in the afternoon, he told me that an assignment to Paul Hymowitz's attorney was made. 2205

Q. Well, it has been testified that the assignment was filed on March 24, 1937. Would that refresh your recollection, Mr. Levy. A. I wouldn't remember the date.

Q. Well— A. All I do remember—

Q. How long after—

Mr. Corbin: Let him finish.

2206 Mr. Walsh: Well, he said he didn't remember.

Q. I don't want to cut you off if you care to continue. Did you have anything to say? A. No.

Q. All right. How long after Teddy Goldman told you that the assignment for the benefit of creditors had been filed did he next tell you about the meeting of creditors? A. I wouldn't remember the date. I can't remember the date.

Q. Was it the next day? A. It wasn't the next day; no.

Q. Well, was it two days after? A. No, it was much
2207 longer than that.

Q. Approximately how long? A. I couldn't say.

Q. You finally did sign a petition in bankruptcy? A. I did.

Q. And where did you sign that petition? A. In Mr. Goldman's office, Teddy's office.

Q. Teddy's office? A. Yes.

Q. And how did you happen to go up to Teddy's office that day to sign the petition in bankruptcy? A. Why, he called me up, that he wants to see me in reference to that matter and he understood—

Q. And is that the day you signed the petition? A. Why,
2208 he told me that they are supposed to sign a petition in bankruptcy and one certain attorney called him up that he would prepare for me—whether I signed it the same day or the next day, I don't remember.

Q. Did he mention the attorney's name? A. I wouldn't remember his name.

Q. Did he tell you that the attorney said that he had a couple of creditors and they were going to put Hymowitz into bankruptcy and he said, "We need you because you have a claim of $260; come on down. We will throw them into bankruptcy." Is that what he told you? A. No.

Q. What did he tell you? A. He told me that an at- 2209
torney representing several of Hymowitz's—

Q. Creditors? A. —Creditors—

Q. Yes? A. —has called him up and told him that they are filing a petition in bankruptcy in this matter and whether I would join with them, and I did.

Q. Yes. Whom did you go down with—or did you go down with anybody the day that you signed the petition? A. I don't get you. Come down where?

Q. To Teddy Goldman's office. A. I went there alone.

Q. You went down alone? A. Yes, sir.

Q. And you signed it at that time? A. I couldn't re- 2210
member the day. I signed it when he called me up or whether I signed it the next day, I don't remember.

Q. Did he tell you the attorney told him that he was going to file a petition in bankruptcy? A. I don't remember his name. I don't know if he told me his name or not. I don't remember names.

Q. Well, you had confidence in Teddy Goldman at that time, didn't you? A. Yes. He did my work for a number of years.

Q. Did you ever know that the petition in bankruptcy was later dismissed? A. I was told about it, yes.

Q. When? A. I couldn't remember the dates. It would 2211
be impossible for me.

Q. Was it around the time that you got your dividend from this Hymowitz estate? A. Oh, it was sooner than that.

Q. Well, how much sooner? Was it a month before? A. No, not sooner than that.

Q. What is that? A. Not sooner than that.

Q. Was it two months? A. I couldn't say.

Q. Can you give me any date at all? A. I haven't—I haven't taken any interest in the case.

Q. Well, who told you that the petition in bankruptcy

2212 had been dismissed? A. I wasn't told that it was dismissed. I was told that it was going to be put aside.

Q. It was going to be put aside? A. Yes.

Q. Do you remember when? A. I can't remember.

Q. Well, reading from Government's Exhibit 15 in evidence, do you remember receiving a letter from Mr. Kandell or Mr. Schulman to the effect:

"Please take notice that the undersigned will purchase from Paul Hymowitz all the merchandise consisting of Army and Navy goods now contained in their store" and it is signed by "A. Rothlein."

2213 Do you remember that, receiving that notice?

A. I remember of receiving different kinds of notices and I turned it over to Theodore Goldman.

Q. Well, I mean— A. All correspondence concerning this case.

Q. I would like to know when you first heard when the petition in bankruptcy was dismissed. Can you help me at all? A. I cannot—I cannot remember the dates because I let Mr. Goldman handle it for me and I didn't take any active part in it.

Q. And you had confidence in Mr. Goldman to protect
2214 your interests, is that right? A. Well, he was my attorney in this case.

Q. You don't know the attorney—oh, did you subsequently come down to the court? A. What court?

Q. This court. On April the 5th. A. Well, I was—on April the 5th?

Q. Yes, before Judge Coxe? A. No, no.

Q. You did not come? A. No.

Mr. Walsh. That is all.

2215

Redirect examination by Mr. Corbin:

Q. You still have confidence in Teddy Goldman, haven't you? A. Well, I have no reason not to.

Mr. Corbin: That is all.

The Court: Stand aside.

(Witness excused.)

The Court: Who is next?

Mr. Fielding: Mr. Schwartz.

Is Mr. Schwartz in court?

(No response.) 2216

Mr. Fielding: I understood, your Honor, he would be here this morning.

The Court: Very well. Do you have anything else this morning?

Mr. Fielding: That was the only other witness I had at this time.

The Court: Any of the other defendants have any other witnesses?

Mr. Corbin: I will call Theodore Goldman.

The Court: Very well.

THEODORE GOLDMAN, one of the defendants, called as a witness on behalf of the defendants, being duly sworn, testified as follows: 2217

Direct examination by Mr. Corbin:

Q. Are you the one that has been referred to here on this trial as Teddy Goldman? A. Yes, sir.

Q. That is your nickname? A. That's right.

Q. And how long have you been a practicing attorney? A. I was admitted in June of 1928.

Q. And you have been in the office with your brother Martin Goldman ever since? A. No. Prior to that time I was associated with another attorney in Brooklyn.

2218 Q. By the way, you live in Brooklyn, don't you? A. That's right.

Q. How long have you been associated with your brother in practice? A. I think since 1930.

Q. And you and your brother both have been located at what address in Manhattan? A. 302 Broadway for the past six years, and prior to that at 225 Broadway.

Q. You are not married, are you? A. No, sir.

Q. And Mr. Malter is a member of the firm, is he? A. Yes, sir.

Q. What is his full name? A. Harry Malter.

Q. And the firm name is Goldman, Malter & Goldman?

2219 A. Yes, sir.

Q. And in 1937 it was that same title? A. That's right.

Q. The same members? A. That's right.

Q. You and your brother and Mr. Malter? A. Yes, sir.

Q. What was the basis of it? A. The basis of the partnership was on a division whereby Harry Malter and Martin Goldman would each receive 40 per cent of the net earnings and I would receive 20 per cent.

Q. You have known this Harry Levy, the last witness here? A. I have.

2220 Q. And have you acted as his lawyer on occasion prior to 1937? A. That's right.

Q. What do you recall of your first contact of any kind with the Hymowitz matter? A. On or about March 24, 1937.

Q. What happened? A. I received a telephone call from Harry Levy who had informed me that the store of Paul Hymowitz was closed and that Paul Hymowitz was indebted to him in the sum of approximately $260, and asked me to handle the collection of the claim for him and to find out the circumstances under which the store was closed.

Q. Now is that the first time that you ever heard anything about Hymowitz or 346 Bowery or anything of that? A. That is the first time that I ever heard anything about it. 2221

Q. All right. What did you do? A. I had one of the law clerks go over to the County Clerk's office, and the federal court, to find out whether there was any court proceeding pending in the matter of Paul Hymowitz.

Q. You say "one of the law clerks." Let me interrupt to ask you what sort of a staff you had: how large an office, how many stenographers and so forth. A. Well, we had I think at that time a managing clerk or attorney; I think we had approximately three or four clerks, and four stenographers, and the members of the firm. 2222

Q. You found through the inquiry that you made through the young man in your office that the assignment had been filed? A. That's right.

Q. And without delaying, that is the assignment that is in evidence here? A. Yes, sir.

Q. What next did you do? A. I telephoned Robert Hoffman, the attorney for the assignee.

Q. How did your know he was the attorney for the assignee? A. One of the law clerks had brought back the information that Samuel S. Kolman was the assignee and that Robert Hoffman was the attorney for the assignee. 2223

Q. Did you reach Hoffman on the phone? A. I did.

Q. What is the substance of your talk with him? A. I told Mr. Hoffman about the fact that our firm represented Harry Levy, a creditor, and asked him the facts in connection with the making of the general assignment for the benefit of creditors, and he related the facts.

Q. What did he say in substance? A. He told me that Paul Hymowitz had been convicted and sentenced several days prior thereto in connection with some crime committed against the City of New York with regard to relief tickets,

2224 and told me that what the assets and liabilities were; as I recall them, he told me at that time that he owed approximately $2500 and that the assets at cost were approximated between twenty-two and twenty-five hundred dollars, and that there were some moneys due from the City in connection with the relief tickets, amounting to between $250 and—there was $250 and $200—$450. He told me at that time that he was preparing a letter which he was sending to creditors setting forth substantially the facts that he told me over the phone.

Q. Did you make any suggestion to him? A. I did. I told him that our client suggested that a meeting of credi-
2225 tors be called for the purpose of having Hoffman advise the creditors the facts and circumstances in connection with the making of the assignment and to discuss the handling of the Paul Hymowitz matter, and he was agreeable.

Q. That is, you suggested that he call a meeting and send that out with the letter and he did that? A. That is right. He told me—

Q. That is the letter in evidence here, of the notice of a meeting? A. Yes, sir.

Q. All right. Meanwhile you had talked with your client on the phone and told him about the assignment, had you?
2226 A. That's right.

Q. And what had Levy said to you when you told him that there was a lawyer? A. Well, he was very much disturbed about the fact—

Q. What did he say? A. He said to me—he asked me whether I knew Robert Hoffman and I told him that I did and I told him that in all likelihood Kolman, the assignee, and Hoffman, the attorney, were designated by Hymowitz and he said that he thought creditors should control and supervise the administration of the estate and thought that some arrangement ought to be made in connection with that.

Q. Now he didn't use any such language as that, did he? A. No, sir. 2227

Q. You are giving us the substance? A. That's right.

Q. And after you talked with Hoffman, that you have given us, the next day you went up to see Hoffman? A. No. I think the night before, either at the time, I called Hoffman or shortly prior thereto, I had received a telephone call from Mr. Kandell of the Dry Goods and Furnishings Association in which he inquired from me as to whether I knew anything about the Paul Hymowitz matter, and I told him that I had received a call from one of our clients, that I had found out from investigation that Paul Hymowitz had made an assignment. He told me that one of 2228
their clients or members of their Assocaition had made an inquiry and that they were representing Butler Bros., and I think it was at that time that I had called Hoffman and I think I—and that's how I came to arrange for the meeting of creditors to be held at the Dry Goods and Furnishings Association.

Q. All right. Well, while I think of it let me ask you, did you or did anyone connected with your firm, so far as you know, at any time say or claim that you or your firm represented Butler Bros.? A. No, sir.

Q. All right. You and Mr. Kandell went over to see 2229
Hoffman the next day, isn't that right? A. That's right.

Q. And will you tell us briefly, in substance, what your talk was so that we get along? A. I told Hoffman about the conversation that I had with Harry Levy in which Harry Levy expressed the desire to have creditors handle or supervise the administration of the estate or be in control, and—

Q. What he probably said—"I have got a creditor who doesn't want"—

Mr. Walsh: I object to what he probably said. What did he say?

2230 The Court: I sustain the objection.

Q. When you are giving us these words, are you assuming to quote the words used by your client?

Mr. Walsh: I object to that, what he is assuming, and what he isn't assuming. Let him tell the conversation.

The Court: I sustain the objection.

Q. Go ahead. A. Well, I am relating in substance as far as I can recollect what the conversation was. I don't remember the exact words.

2231 Q. Go ahead. Tell us what it was. A. I told him about the fact that Harry Levy said he was opposed to Hoffman, the attorney for Hymowitz. Kolman who was designated by Hymowitz in supervising and administering the estate, and that there ought to be creditor supervision and control. Mr. Hymowitz—Hoffman then told me that there was no necessity at that point for making any decision, that the matter would be discussed at the creditors' meeting in the afternoon of that day. He said that as far as he was concerned he was satisfied to have creditor supervision and control.

Q. Did you at that time say that you were going to file
2232 a petition in bankruptcy or anything to that effect? A. No, sir.

Q. Did Kandell? A. No, sir.

Q. Mr. Kandell was there all the time you were there? A. That's right.

Q. And after you talked with Hoffman the day before on the phone, had you prepared a stipulation or consent that there be a co-assignee and a co-attorney for the estate? A. I prepared that on the morning of March 25.

Q. It was after your prior talk with Hoffman? A. Yes.

Q. And before you went up there you took that up with you? A. That's right.

Q. And did he sign it there at that time? A. He did 2233
not.

Q. And then you left that paper with him, is that correct? A. He asked me to leave it with him.

Q. Well, you did leave it? A. I did.

Q. Did you attend the creditors' meeting that afternoon? A. I did not.

Q. What was the next you had anything to do with the matter? A. I don't think I had anything further to do with it until on or about—oh, I think it may have been about four or five days after the meeting of creditors. I received a telephone call, I think, from Phil Cohen of the Dry Goods & Furnishings Association in which he ad- 2234
vised me that he had been receiving telephone calls from several of the creditors and the representatives or buyers that they had sent to the store, who had called him and told him the store was closed, and whereas the arrangements that had been made with Hoffman was to have the store open between certain hours of that day, and he asked me to communicate with Mr. Hoffman, find out why the store was closed, and arrange to have it opened. I telephoned Mr. Hoffman and he told me that he had made arrangements with Mr. Kolman to have the store opened on that day and that in all likelihood Hoffman—Kolman 2235
was delayed in arriving at the store at the time when the first appointment was made, and that he would see to it that the store was opened as quickly as possible.

I think I called back Mr. Cohen and communicated that fact, and I think later in the day I had been told by Mr. Cohen, or Hoffman called me back and said he heard that Kolman was there and that the store was opened.

Q. All right. What was the next thing of importance? A. Well, the next thing that I heard in connection with the matter is I had received a telephone call from Mr. Schulman on or about April 2nd, 1937, in which he told that

2236 several of his creditors had consulted him in connection with the Hymowitz matter and these creditors had sent prospective buyers to look at the stock, and that they tried to communicate with Mr. Hoffman and that Schulman had tried to get Mr. Hoffman but they couldn't reach him. They had called him and left the phone numbers and they couldn't get in touch with him and his creditors were dissatisfied with the fact that Hoffman wasn't following out the arrangement that he had originally made at the first creditors' meeting, and that he said his clients wanted to file a petition in bankruptcy and asked whether our client, Harry Levy, would join with him.

2237 He asked me how our client felt about it and I said I didn't know, I would call Harry Levy and find out, and I thereafter—I think that day before I called Levy, I think I called Hoffman. I think Schulman asked me to or I called him myself and tried to reach Hoffman for the purpose of finding out what the reason for this delay in arranging this further conference and carrying out the creditors' wishes, and I couldn't reach him. I had left a message and he didn't call back.

I then called Harry Levy and told him about the conversation I had with Schulman and he said that he was satisfied to join with these other creditors.

2238 Q. Well, he did sign it up; the petition was prepared over in your office and it was signed by—

Mr. Walsh: I object to this leading, if your Honor please.

The Court: Well, I will overrule the objection.

Mr. Walsh: I think this—

Mr. Corbin: What is that?

Mr. Walsh: I wish you wouldn't lead him.

The Court: Very well. I will sustain the objection, and don't lead him.

Mr. Corbin: It is all right with me.

The Court: I will sustain the objection. 2239

Q. What was the conversation that you had with Schulman? Give it to us in detail.

Mr. Walsh: We are past that.

A. Thereafter, after talking to Harry Levy I called Schulman back and told him that our client Harry Levy was satisfied and willing to join in the petition in bankruptcy. Schulman then gave me the names of his creditors, or the other petitioning creditors, gave me the names of the partners—the partnership name—gave me the amount of their claims and I prepared the petition in our office. I 2240
also prepared—dictated the petition and order for the stay staying the assignee from proceeding with the sale.

Mr. Corbin: May I have the petition now?

Mr. Walsh: Government's Exhibit 3 (handing to Mr. Corbin).

Q. Is this the original petition that was prepared or one of the originals (handing to witness)? A. This is a duplicate original of the petition that was prepared.

Q. Now, this information contained in the paper the names of the petitioners, the individual members of the firm and the amount of their claims in each instance—that 2241
is the data that Schulman gave to you on the telephone? A. Yes.

Q. How did it happen that you prepared it instead of he? A. Why, Schulman asked me to. He knew that we had four stenographers in our office and it was a Saturday morning—

Q. How big an outfit did Schulman run? A. He was a single practitioner; had one girl.

Q. And this petition was signed over in your office too, wasn't it? A. Yes, sir.

2242. Q. I notice that Schulman's name is on it as attorney for the petitioning creditors. Did you undertake with him about that, whether he would appear or you would appear as attorneys of record? A. Well, originally our firm name was on the petition. I thought that we were going to be the attorneys for petitioning creditors, and when he came over to the office to sign it he felt that he ought to be the attorney for the petitioning creditors because he represented three—two or three out of the total number of creditors, whereas we only represented one of the petitioning creditors, and so the stenographer erased our name and he asked her to insert his name and address on the petition.

2243 Q. And that was agreeable to you, wasn't it? A. Yes.

Mr. Corbin: I will show this to the jury, you can see where the name was erased from there (indicating). You can take it if you wish (handing to forelady).

Mr. Walsh: If your Honor pleases, I did not hear about the last three sentences that Mr. Corbin has said—if he will stand back—will you read what he said?

(Record read.)

Mr. Walsh: "The name was erased"? That is the
2244 name of Goldman, Malter & Goldman, is that right?

Mr. Corbin: You got that straight; sure.

Q. Find me the petition that you prepared at the same time, the petition to stay the sale. A. (Handing paper to Mr. Corbin.)

Q. Is this it? A. Yes, sir.

Q. This is dated April 3rd, verified by Mr. Schulman as attorney in fact. His name is on it as attorney for the petitioning creditors.

Did you also prepare this petition and this proposed order for Judge Coxe to sign restraining the sale? A. I did.

Q. Mention has been made during the course of the trial 2245
that the petition in bankruptcy did not mention the fact that there had been an assignment for the benefit of creditors. Did you notice that that is the fact, that that part of it isn't filled in? A. Yes, I know it isn't.

Q. This is all on a printed form, isn't it? A. That's right.

Q. Did you have any discussion with Schulman for any purpose at the time to omit that filling in of that printed form in that paragraph? A. No, sir.

Q. As a matter of fact the petition that you dictated and prepared on the same day referred to the assignment, didn't it? A. May I see it? 2246

Q. Expressly (handing to witness). A. Yes, it did.

Q. You weren't trying to keep from the Court the fact that there was an assignment for the benefit of creditors that had been executed in this case, were you? A. I was not.

Mr. Corbin: I will read from this petition, Judge. (To the jury) After the first two paragraphs, the third paragraph is that "on the 24th day of March, 1937, the alleged bankrupt executed a general assignment for the benefit of creditors and notice of sale was sent out in the assignment proceeding that the assets would be sold at auction sale on April 5th, 1937 at 2247
10:30 a. m."

And then the fourth: "After the filing of the assignment for the benefit of creditors a meeting of creditors was held at the Dry Goods & Furnishing Association at which time creditors expressed their dissatisfaction with the liquidation of the estate in the assignment proceeding and suggested that the assets of the alleged bankrupt be inspected for the purpose of determining the value based upon which the debtor or the alleged bankrupt was to offer a

2248 settlement. Subsequently thereto, the premises were opened for inspection and the assets were inspected by the various prospective buyers.

"5. The attorney for the alleged bankrupt now refuses to make any offer of settlement and insists upon a liquidation of the assets in the assignment proceeding.

"6. In view of the fact that the creditors are opposed to the liquidation of the estate in the assignment proceeding your petitioner desires to have the annexed order signed in order to stay the assignee from proceeding with sale under the assignment pro-
2249 ceeding so that in the event that no settlement is made that an application for the appointment of a receiver in bankruptcy may be applied for the assets sold under the supervision of this Court."

Q. Now that was your dictation and you dictated it in the knowledge that it was to be presented to this federal court here? A. Yes, sir.

Q. Did that fairly state the facts insofar as the petition reflects them, as you understood them to be at the time? A. It did.

Q. Do you recall whether you dictated—well, you did not
2250 dictate the petition in bankruptcy because it is a printed form filled in? A. No. That's a printed form that we use.

Q. Yes, and how did you prepare this printed form of the petition in bankruptcy? A. Well, I first dictated the petition and order for the stay.

Q. Right; that's all. A. And then I gave the girl, the stenographer, the names of the creditors, the amounts of their claims, the name of the person who was going to sign the petition; gave her the—

Q. That was the stuff that you had gotten over the telephone from Schulman? A. Yes.

Q. That data? A. Yes.

Q. And she filled out the form? A. And she filled out 2251
the form herself.

Mr. Walsh: I think he ought to say what else he told the stenographer, rather than fill it out in blank.

The Court: Very well. You can take that up on cross-examination. I believe we will recess until 2:15.

(Recess until 2:15 p. m.)

AFTERNOON SESSION.

THEODORE GOLDMAN, resumed the stand.

2252

Direct examination continued by Mr. Corbin:

Q. Still referring to these two papers and the petition in bankruptcy, and the petition to stay the sale, in addition to these two papers that you prepared thereafter and during the ensuing weeks, you drafted another—

Mr. Walsh: I object to leading the witness, if your Honor please.

The Court: Objection sustained.

Mr. Corbin: Let me finish the question, please, your Honor.

The Court: You have gone far enough, Mr. Corbin, 2253
to demonstrate it is a leading question.

Q. After you prepared these two papers and during the ensuing weeks, did you or did you not prepare other papers? A. I did.

Q. Of various types? A. Yes, sir.

Q. Did you ever have any doubt that you had prepared this petition for the purpose of staying the sale, the one that you dictated? A. I did.

Q. You never had any doubt that you prepared that, did you? A. May I see it, please?

2254 Q. The petition and order staying the sale? A. Yes, sir, I prepared this (indicating).

Q. Now so far as this printed form, the one that you testified about this morning and gave to the stenographer, which is endorsed "Involuntary petition in bankruptcy"—as to that one was there a time when you did have some doubt in your mind as to whether you had prepared it or not? A. There was.

Q. And do you remember an occasion when there was a hearing before a referee as to whether your firm was entitled to—

2255 Mr. Walsh: I object to all this as leading. I think the witness is competent to testify himself.

The Court: I will overrule the objection to that question. That is preliminary.

Mr. Walsh: He is going to tell him what he testified to at that hearing. That is what I object to.

Mr. Corbin: I move to strike out the remarks of Mr. Walsh.

The Court: I will sustain the motion to exclude the remarks.

2256 Q. (continued) share in the $300, that Hoffman got? A. Yes, sir.

Q. And you were a witness at that time? A. I was.

Q. And were you asked, among other things, whether you prepared this involuntary proceeding in bankruptcy, the printed form? A. Yes, sir, I was.

Q. What did you say then? A. I said I did not.

Q. Then at some later time you were a witness before a grand jury in this case? A. I was.

Q. And did you then state, in words or effect, that you did not prepare this petition? A. I did.

Q. On those occasions were you intentionally—

Mr. Walsh: I object to that, if your Honor please. 2257
That calls for a conclusion.
The Court: Yes. Objection sustained.

Q. On those occasions when you so testified did you believe that you had not prepared it?

Mr. Walsh: I object to that also, your Honor.
The Court: I will overrule the objection.

Q. (Read.) A. That is right.

Q. And when was it that you recall the fact that you did, as you testified here, prepare— 2258

Mr. Walsh: I object to all this, your Honor.
The Court: I will overrule the objection.
(Question read.)

Q. This involuntary petition? A. I think it was at a conference at your office, a conference of the attorneys in connection with the preparation of the case for trial.

Q. Well, it was within a month or two? A. Recently, within the past month or so.

Q. And on that occasion the duplicate original of this involuntary petition was present at the conference, wasn't it? A. Yes, sir. 2259

Q. And do you recall that we then noticed that the name "Schulman" had been written in over and your firm name, to be stricken out?

Mr. Walsh: I object to that, your Honor?
The Court: Objection sustained.

Q. What caused you to recall it? A. At that time Schulman exhibited at the conference the duplicate original of the involuntary petition in bankruptcy, and at that time Schulman called it to my attention, that the body of it had

2260 been prepared in our office, and that it had the firm name of Goldman, Malter & Goldman on the body and that it had been erased and the name "Schulman" had been typewritten in.

Q. And was it then that your recollection was refreshed? A. That is right.

The Court: Let me see those exhibits.

(Exhibits handed to the Court.)

Q. After this interval of the preparation of the petition in bankruptcy to stay the sale—you had to do with the preparation, I think you said, of other papers? A. Yes, 2261 sir.

Q. Did you have any further conference after that with Hoffman? A. I did not.

Q. Do you recall a conference at your office at which Hoffman was present and there were others, including Mr. Scott, who testified this morning? A. Yes, sir, that is right, at my office.

Q. When was that? A. May 28, 1937.

Q. Will you tell us who was present? A. Robert Hoffman, Samuel Kolman, Severin Scott, Gabriel Wishbow, Edward Lipkowitz and myself.

Q. Lipkowitz came in later but before the conference 2262 ended? A. Yes, sir.

Q. At that or any other time did you say to Mr. Hoffman or to any one in his presence or to any one out of Hoffman's presence that, in words or substance, you would get this man Severin Scott to take $25 or $50, that that would be his cut-in, to withdraw his application to remove the assignee? A. No, sir.

Q. The charge in this indictment is in substance that the defendants in this case would conspire and agree, among other things, to obtain a compromise from Hoffman, the attorney, to consent to a settlement of 40 per cent to

creditors and would join with the defendants in the sale of the assets at a price purporting to be $1500, whereas the true price would be $1900; the defendants and said Hoffman retaining and receiving a difference of $400 and thereby the bankruptcy proceedings would be dismissed; did you ever enter into any such agreement with anybody? A. I never did. 2263

Q. Did you ever conspire to enter into any agreement to sell this stock for $1900 and report the price to the creditors to be $1500? A. No, sir.

Q. Or to split $400 difference between 1500 and $1900? A. No, sir.

Q. Or to split $400 or any other sum, whether it be the difference between 1500 and 1900 or 12 and 16 or otherwise with anybody, for any illegal purpose? A. No, sir. 2264

Q. Was there any such understanding or agreement entered into by anyone so far as you know? A. None that I know of.

Q. Did you ever hear of any such thing? A. Never did.

Q. Until this indictment came down? A. That is right.

Q. The indictment was found this year, 1940? A. That is right.

Q. Did you in the course of your relationship with the Hymowitz matter, from the beginning to the end, ever hear anybody mention a price of $1900 that would be received for the assets, in whole or in part? A. I never did. 2265

Q. Did you ever hear of any purchaser making any offer, or any prospective purchaser making any bid of $1900 for that stock, in whole or in part? A. I did not.

Q. In that conference late in May of 1937 that I just referred to and that Mr. Hoffman testified about, he said that your brother Martin Goldman was going back and forth through the room; do you recall that? A. I have no such recollection.

Q. Well, the conference was held in your room, wasn't it? A. It was.

2266 Q. Is your room so located that anyone can pass through it back and forth? A. No, sir.

Q. And it was not so located at that time? A. It was not.

Q. Do you recall Martin Goldman being at that conference at all? A. I do not recall him being present.

Q. Did you hear Mr. Scott testify here this morning? A. I did.

Q. At that conference did he say to Hoffman in words or in substance, why, you represent Hymowitz practically—

Mr. Walsh: I object to that. If he wants to get this witness's recollection, why doesn't he ask him?

2267 Mr. Corbin: I am trying to get what happened.

The Court: I will overrule the objection. There are certain matters on which you are permitted to ask leading questions, practicularly about various matters.

Mr. Walsh: He didn't ask if Hoffman said that. That is why I objected to it.

The Court: I will overrule the objection, without stating the reason. There are two theories, one is that it is not leading, and I will follow that rule.

Q. At that conference did Hoffman say he represented Hymowitz? A. He did.

2268 Q. And what did he say with reference to letting the sale go through so far as Endicott-Johnson's application was concerned? A. Well, as I recall the conversation that took place at that time, Scott indicated and told Hoffman that he would not accept the 40 per cent settlement in full, the 40 per cent settlement that was contemplated being paid to the creditors, that his client, Endicott-Johnson, would not accept that amount of 40 per cent in full settlement of their claim. And Hoffman then said, "Unless we get a release from Endicott-Johnson"—he was opposed to the contemplated sale of the assets and the 40 per cent to the creditors.

Q. Scott at that conference didn't object to the sale going through? A. No. 2269

Q. It was Hoffman?

Mr. Walsh: I object to that

The Court: Objection sustained.

Q. What was it Hoffman said? A. Hoffman said unless Scott or the firm he represented, Endicott-Johnson, would accept the 40 per cent settlement in full and give a release, that Hoffman said he would not permit the sale of the assets.

Mr. Corbin: Your witness. 2270

Cross examination by Mr. Walsh:

Q. You didn't know Mr. Hoffman prior to March 24, 1937, did you? A. I did not.

Q. Did you know Mr. Kolman? A. I did not.

Q. That is the first time you ever met them, on or about March 24, 1937? A. No, I didn't meet Mr. Hoffman on the 24th of March.

Q. I beg your pardon. You called him up on that occasion? A. That is right.

Q. And when did you first find out about the assignment being filed? A. On March 24, 1937. 2271

Q. And how did you find it out? A. By one of our law clerks who made an examination of the court records and so informed me.

Q. Did you ever make an examination of the court records in the Supreme Court, so far as the assignment file is concerned? A. On March 24?

Q. At any time? A. Yes, sir, I made an examination thereafter.

Q. Can you tell me whether or not you can find out whether or not an assignment is filed and find out that it

2272 has been filed on that same day, in the Supreme Court? A. I never had occasion to do that.

Q. You know you cannot do it. You have to find out from the auctioneer or from the Law Journal next day? A. I think you are wrong with regard to that.

Q. Did you ever do it? A. I never had occasion to do it.

Q. Your law clerk did it? A. I know it is a public record and is filed in the County Clerk's office.

Q. Do you know the modus operandi of an assignment filed? A. I do.

Q. What is it? A. It is filed in the County Clerk's office,
2273 in the county.

Q. Let us take New York County. A. The original assignment would be in the County Clerk's office, in the Supreme Court Building.

Q. That is correct. Then what happens? Then is there a public record made as of that time? A. I know they have a docket book in which they record the filing of the assignment.

Q. Next day? A. I don't know that.

Q. You don't know that? A. No.

Q. The first time that you telephoned Hoffman, I believe you said that he told you that the assets or the liabilities
2274 were approximately $2500? A. $2200 to $2500, at cost.

Q. And how much did he tell you the liabilities were? A. Approximately $2500.

Q. And you also mentioned that there was something about relief tickets? A. That is right.

Q. On that basis that was a solvent estate, wasn't it? A. Based on the figures that he gave me?

Q. Yes. A. I don't know whether the figures were correct or not.

Q. Based on what he told you it was a solvent estate? A. Not so far as the liquidation of the assets.

Q. You don't liquidate a solvent estate, because this individual was in jail, but based on the figures he told you and what you have already testified to that the cost would be $2200 to $2500 and the relief tickets, that would be approximately 2600 to 2900; is that correct? A. That is right. 2275

Q. And the liabilities were $2500? A. That is right.

Q. So basing your thought on what he told you, that was a solvent estate? A. It was not, because I know that you cannot realize in liquidation—

Q. Well, regardless of whether or not you could realize a certain amount in liquidation, so far as you know, and from what he told you, it was a solvent estate, but at a forced liquidation, perhaps you could not get 40 cents on the dollar; that is correct, isn't it? A. No, sir. Mr. Hoffman had told me about the fact that the sale of the assets, an auction sale, had been arranged, that he obtained an order for the sale of the assets on April 5, 1937, and I knew that you could not realize at an auction sale the amount of the cost value of those assets, and based upon that figure I knew the estate was insolvent. 2276

Q. At a forced sale? A. He had told me he had arranged an auction sale of the assets.

Q. He also told you that the mother could not under any circumstances continue the business, and that was the reason he was throwing all the money over to his creditors so that when he did get out of jail, that the creditors from whom he had purchased goods in the past would be well disposed towards him and give him an opportunity? A. Never made such a statement. 2277

Q. Isn't that what is in Government's Exhibit 5-A, in the letter? A. I don't recall the exact words in the letter.

Q. That is the letter that was sent out to the creditors. Don't you remember that, Mr. Goldman? A. I remember the letter but I don't remember the contents.

2278 Q. The widowed mother of Paul Hymowitz made a futile attempt to conduct the business after her son, Paul, was convicted; do you remember that? A. Yes, sir, I remember that being in the letter.

Q. It was the wish of Paul Hymowitz that his business be liquidated so that the creditors should receive the greatest possible benefit and had entrusted Mr. Kolman with carrying out his wishes. Do you remember that part of the letter? A. Yes, sir.

Q. And thereafter the meeting was had with Mr. Hymowitz at Rikers Island and they signed this assignment, which was filed on the 24th. Does that refresh your recol-
2279 lection, that Mr. Hoffman told you all that, on that occasion? A. He may have told me. I don't recall the exact words you read. I knew about the assignment; I knew about the fact that Hymowitz had gone to jail.

Q. You suggested that a meeting of creditors be called, and it went out with the letter? A. That is right, but I had not seen that letter at the time. I had some conversation with Hoffman on March 24th.

Q. He told you about the assets at that time? A. He did.

Q. Mr. Hoffman didn't object when you suggested a
2280 meeting of creditors, did he? A. First he thought there was no necessity for it.

Q. Now we are talking of March 24th? A. Yes, sir, that is right.

Q. He finally said he would send out a notice to the creditors? A. After I requested him to do so.

Q. He didn't object? He sent it out, didn't he? A. That is right.

Q. Then on March 25th, if my memory serves me correctly, you went over together with Mr. Kandell to Mr. Hoffman's office? A. That is right.

Q. About what time? A. I think it was around 12 noon or between 12 and 12:30.

Q. And did you have a conversation with him at that time? A. I did. 2281

Q. And what was that conversation? A. He related the details in connection with Hymowitz going to jail. He told us more details about the criminal proceedings and also gave us more information in connection with the facts and circumstances relating to the assignment. He told me about the fact that although he did not represent Hymowitz in connection with the criminal proceedings, he was related, but indirectly, to Paul Hymowitz and had known the family for many years.

Q. Did he tell you about the assets on that day? A. I don't recall. We probably discussed it at that time. 2282

Q. Well, that was not a big estate, was it? A. I wouldn't consider it a big estate.

Q. And you had prepared, had you not, prior to your going over to Mr. Hoffman a retainer to retain your firm as co-attorneys? A. That is right.

Q. Is that correct? A. Yes, sir.

Q. Is that what you usually do when you represent a creditor? A. No, sir.

Q. Is that the first time you ever done that? A. I have no recollection of any other occasion at this time.

Q. Were you so sure that you would be retained that you brought the notice with you? A. I was not certain. 2283

Q. But you were prepared? A. Yes, sir.

Q. And Mr. Kandell was, of course, the assignee? A. Designated in the stipulation.

Q. As a matter of fact, you said you represented Levy on that occasion? A. I did.

Q. Who did Kandell represent? A. Butler Bros.

Q. Is it not a fact that Butler Bros. did not authorize Kandell to act until March 26th, the day after the meeting of creditors? A. I do not know anything about that.

Q. You won't deny that? A. I do know Kandell stated to Hoffman that he represented Butler Bros.

2284 Q. On that occasion, and so stated to you? A. On March 25, and I think he stated it to me on March 24, the night before.

Q. Well, he had represented Butler Bros. in other bankruptcies but had not been authorized to act in this one until March 26? A. I don't know. I have no knowledge of that fact.

Q. How did you happen to get in touch with Kandell before you went over there on March 25th? A. I think that I called Kandell or Kandell called me on the morning of the 25th and asked me about the books and records of Paul Hymowitz, whether he could see them before the
2285 meeting of the creditors. And I told him that I didn't know of any books and that in all likelihood Hoffman had the books and records at his office.

Q. And what did Mr. Hoffman tell you when you got over there concerning the books? A. He said there were no books, that all he had were loose bills, paid and unpaid.

Q. What was the conversation between you and Kandell when you dictated the retainer for co-attorney and co-assignee? A. I prepared—

Q. Which did you prepare first? A. I dictated both of them simultaneously.

Q. What was the conversation that led up to the dicta-
2286 tion of this co-attorney and co-assignee retainer simultaneously? A. I told Kandell that our client, Levy, had requested that there be creditors' supervision and control, that the clients wanted the assignee and attorney for the assignee selected by Hymowitz completely out of the case, felt it was a matter that the creditors should handle. I told Kandell that I contemplated going up to see Hoffman and discuss that phase of the matter with him, and I asked Kandell whether he would be willing to serve as co-assignee.

Q. Why? A. He represented a creditor, and he said

it was satisfactory, and I prepared the papers, in anti- 2287
cipation of discussing the matter with Mr. Hoffman.

Q. After you had this conversation with Mr. Hoffman, at which time Mr. Kandell was present, what did you do then after that? Did you do anything more that day? A. After we left Mr. Hoffman?

Q. Yes, so far as the Hymowitz matter was concerned. A. I did nothing further that day.

Q. That was the day of the meeting? A. That is right.

Q. What time was the meeting? A. I think 4 or 4:30 in the afternoon of that day.

Q. Did you have a conversation with your brother con- 2288
cerning your conversation with Mr. Hoffman? A. On the 25th?

Q. 24th or 25th of March. A. On the evening of the 24th of March, after I had arranged for the meeting of creditors at the Dry Goods Association I told my brother about the fact that I had arranged the meeting and that I could not be there because of some prior appointment that I had and asked him if he could arrange to be there, and he said he would.

Q. Is that all? A. That is all.

Q. Nothing else said? A. I told him that Hoffman had told me that his client, Paul Hymowitz, had gone to jail, 2289
the store was closed, and that the assets consisted of merchandise, inventory and fixtures which Hoffman said at cost were worth approximately between $2200 and $2500, and that there was some money due from the city in connection with relief tickets.

Q. Did you tell him how much? A. Yes, sir, I told him the figures were approximately $450, and that the approximate liabilities were $2500.

Q. What did he say? A. He said he would attend the meeting.

Q. Had you mentioned to Mr. Hoffman that unless you

2290 were appointed co-attorney, that perhaps there would be a petition in bankruptcy filed? A. I did not.

Q. You did not? A. No.

Q. You are sure of that? A. Positive.

Q. Is there anything else that you told your brother concerning it? A. That is all.

Q. Did you tell him anything about your thoughts about filing a petition in bankruptcy in the event that Hoffman wouldn't allow you to act as co-attorney? A. I did not.

Q. You did not. You never mentioned petition in bankruptcy at that conversation? A. No, sir.

2291 Q. And did your brother attend that meeting, if you know? A. He did.

Q. Did you ever have a conversation with him as to what happened at the meeting? A. Yes.

Q. And at that time did he tell you who was present at the meeting? A. No, sir.

Q. Did you know that Mr. Schwartz was present at the meeting? A. I did not.

Q. Did you see Mr. Kandell after the 25th, after the meeting? A. I did not.

Q. Did you see him at any time prior to April the 2nd, the day when Schulman testified he called you up?

2292 A. I did not.

Q. Did you have any conversation with your brother Martin between March the 25th and April the 2nd concerning the creditors or anything concerning the filing of the petition in bankruptcy? A. I did not.

Q. When was the first time that you heard about "it would be a good idea to file a petition in bankruptcy"? A. When it was related by Mr. Hoffman on the witness stand.

Q. Perhaps you did not understand my question. After March the 25th who was it that suggested it to you, that

a petition in bankruptcy should be filed in the Hymowitz 2293
matter? A. Mr. Schulman.

Q. And it was Mr. Schulman that first brought that to your attention, is that correct? A. That is right.

Q. And prior to the time that Mr. Schulman suggested filing a petition in bankruptcy you had no conversations or had nothing more to do with the Hymowitz matter? A. I think on April 1, 1937, I had sent to our client, Harry Levy, a form of proof of claim to be executed by him in the assignment proceeding, and I also sent—

Q. Did you get it back? A. I do not recall.

Q. Well, have you got it? A. I don't know whether it's in the file or not. 2294

Q. But did you receive such a proof of claim back from Mr. Harry Levy? A. I have no recollection as to whether I did or not.

Q. Well, that was a proof of claim for an assignment proceeding, was it not? A. That is right.

Q. It had nothing to do with bankruptcy? A. Nothing at all.

Q. Now I want to know definitely when you first heard about filing a petition in bankruptcy. A. On April 2, 1937.

Q. From whom? A. Mr. Schulman.

Q. And what did he tell you? A. He told me that his 2295
clients, Schwartz & Zuckerman, Ribach & Mantis, had attended this creditors' meeting at the Dry Goods & Furnishings Association and that a certain arrangement or agreement had been made with Mr. Hoffman with regard to the inspection of the assets by the creditors and the subsequent sale and liquidation for the purpose of effectuating settlement with the creditors.

Q. That was on the 2nd of April? A. That is right.

Q. Correct me if my memory does not serve me right, but did you testify on direct examination that Mr. Cohen had called you up concerning looking over the store and

2296 people were going down looking at the merchandise? A. That is right.

Q. So as far as you know when Schulman told you that, you knew that wasn't absolutely correct because Cohen told you that creditors had been allowed to go into the store; isn't that correct? A. No. Schulman called me and told me that while the creditors had inspected the assets that they couldn't reach Hoffman for the purpose of completing and consummating the arrangement which Hoffman had made with the creditors at that meeting.

Q. Well, what was that arrangement? A. For the pur-
2297 pose of receiving bids from the people who inspected the assets and then to arrange for a sale of the assets.

Q. And who were those creditors? A. beg your pardon?

Q. Who were the creditors that couldn't get this arrangement—

Mr. Walsh: Will you read the question, Mr. Stenographer?

Q. (Read.) A. Schulman told me that his clients couldn't complete that arrangement.

Q. That was on April the 2nd? A. That's right.

Q. That was the date that the petition was prepared?
2298 A. It was either prepared that day, later that day or Saturday morning.

Q. And did Schulman come over to the office on that occasion on April 2? A. No. I think he came over on Saturday morning, April 3.

Q. What was the conversation you had with Mr. Schulman on April the 2nd? A. Schulman related or told me that he had tried to reach Hoffman after his clients had told him that they were having difficulty in contacting him and he said that he had—

Q. Did you tell Schulman at that time that Mr. Cohen

said there was no difficulty about seeing the stock? A. Well, there was no question about seeing the stock. They had seen the stock. It was a question of reaching Hoffman for the purpose of completing the arrangements that Hoffman said he would make with the creditors at the meeting.

Q. Well, what are those arrangements that Hoffman made at the meeting? A. Well, the creditors said they would send various people to look at the stock to determine what the highest price could be obtained for the stock.

Q. And Cohen told you that they could go in and see the stock when they wanted, didn't he? A. No. I said on direct examination that Cohen called me several days after the meeting of creditors on the 25th and told me he had received telephone calls from some of the people who went to the store to inspect the assets and that they found the store closed on that particular morning, and I then called Hoffman for the purpose of finding out why the store was closed when the arrangement had been made at the meeting of creditors that the store would be open, and when I talked to Hoffman about it and he said he had arranged with Kolman to be there and there was probably some delay, and I then called Cohen back and I told him to have the people wait there, that Kolman was probably delayed and thereafter Hoffman called me and told me that he had heard from Kolman and that Kolman had opened the store and that people were there inspecting the assets.

Q. So that between March 25 and April 2 your brother did not tell you that Schwartz or that Mantis was at the meeting of the creditors? A. That's right.

Q. You are sure of that? A. Positive.

Q. You are an attorney, are you not, sir? A. I am.

Q. And what happened after you had this conversation with Mr. Schulman? He said he had two creditors, is that correct? A. No. He said that he had three creditors.

2302 Q. Who were they? A. Ribach & Mantis.

Q. That's one. A. Schwartz & Zuckerman.

Q. Two. A. And Kreiselman—A. Kreiselman & Sons I think is the firm name.

Q. He had Kreiselman, too? A. Yes.

Q. And you had Harry Levy? A. That's right.

Q. Now do you remember where Harry Levy signed the petition? A. At our office.

Q. Do you remember where Kreiselman signed the petition? A. I do not recall. I do not know. I don't think I was present at the time he signed it.

Q. Well, isn't it a fact that you sent that petition out
2303 to Kreiselman, had a boy take it over to his place of business? A. I have no recollection of that.

Q. You don't remember that? A. No, sir.

Q. But Harry Levy you do remember signing in your office? A. I am pretty sure he did.

Q. Now, Mr. Goldman, I show you Government's Exhibit 3 marked in evidence, which is the involuntary petition in bankruptcy. Did you prepare that (handing to witness)? A. Yes. This was prepared in our office.

Q. And when did you first find out that you prepared it? A. When we had a conference with the attorneys in connection with the preparation of this case for trial.

2304 Q. And who was at that conference? A. My brother Martin, Mr. Kandell, Mr. Schulman, Mr. Corbin, Mr. Bennett and Mr. Fielding.

Q. And isn't it a fact, Mr. Goldman, that the reason that you are now testifying that this was prepared in your office is because Schulman said that he was going to deny that it was prepared by him? A. No, sir.

Q. And isn't it also a fact that the reason you are now admitting that this was prepared in your office is because you can almost see the fact that it was on the form of Goldman, Malter & Goldman; isn't that a fact? A. No, sir.

Q. Well, usually if you use somebody else's form wouldn't 2305
the usual practice be just to strike out and put Jacob Schulman and strike Goldman, Malter & Goldman out? A. Not necessarily.

Q. Do you see how carefully that has been eradicated? It is hardly perceptible. A. This was handled by the stenographer in the office and I assume in erasing she erased it—

Q. Very thoroughly. A. Well, you can still see that there were erasures on the paper.

Q. Is that the reason why you are now admitting it, that that is the form of Goldman, Malter & Goldman? A. No, sir. 2306

Q. Because the Bureau has a method of detecting that? A. No, sir.

Q. You didn't know that, did you, that the Bureau has a method whereby they can detect underneath—A. No, sir.

Q. —and they can detect what has been rubbed out? A. No, sir.

Q. Isn't that the reason you are admitting that? A. No, sir.

Q. Do you know what perjury is? A. Yes, sir.

Q. What is it? 2307

Mr. Corbin: Just a moment. I think that is insulting and there is no reason in the world for that kind of an examination of this witness.

The Court: I will sustain the objection.

Q. Now I call your attention, Mr. Goldman, to the fact that No. 1 in the petition, which was prepared by you, alleges that the act of bankruptcy was that the alleged bankrupt "with intent to hinder and delay transferred and set over funds in the value of $500 applicable to the payments of the debts of the alleged bankrupt."

2308 Is that the act of bankruptcy upon which you predicated the filing of this involuntary petition? A. That and allegation No. 2?

Q. And what is that allegation? Is that "While insolvent the alleged bankrupt transferred various moneys amounting in the aggregate to the sum of $500 to various of his creditors with intent thereby to prefer such creditors."

So there are two acts of bankruptcy there, is that correct? A. That is right.

Q. Mr. Goldman, you prepared this, did you not? A. It was prepared at our office.

Q. Wel. you were the legal draftsman, weren't you?
2309 A. I did not dictate that petition except that I gave the information to the girl and told her to prepare it—

Q. Well, you told her to put the $500 under allegation No. 1, didn't you? A. Well, that's a printed form and we always—

Q. No. You filled this in; this is typewritten. This $500—

Mr. Corbin: Let him finish the answer, please.

The Witness: I will finish the answer.

Q. Yes. A. (Continuing)—and we always use in the filing of an involuntary petition allegations No. 1 and
2310 No. 2 as a matter of practice.

Q. Whether or not you have any basis upon which you are predicating that allegation? A. That's right.

Q. So that with no information at all you would say that this individual has paid over $500 to the detriment of the creditors, is that correct? A. We knew at that time that Hymowitz had gone to jail and that there was some fraud committed against the City so that there was no danger or question about that there might be some fraudulent transfers or preferential payments.

Q. You did not think highly of Hymowitz, did you? A. I had nothing to believe anything to the contrary.

Q. Well, is that the reason you put that allegation in there, Nos. 1 and 2, that he had paid over $500 to some people? A. That's a form, the allegation we use— 2311

Q. Well, you had no basis upon which you could predicate that allegation, did you? A. We had no definite information as to the allegation—

Q. And you were speculating because he had been in jail, that perhaps he did that? A. Yes, sir.

Q. Now you see down here, at No. 6, that there is a specific allegation that "On or about the blank day of blank the alleged bankrupt made an assignment for the benefit of creditors." You knew, did you not, that Hymowitz had made an assignment for the benefit of creditors prior to the time that you prepared Government's Exhibit 3? A. I did. 2312

Q. Why didn't you put that in there? A. The girl evidently—

Q. Oh. Well, you told her what to put in?

Mr. Corbin: Will you let him finish one answer, please?

Mr. Walsh: I would be happy to, sir.

A. It was evidently an inadvertent omission.

Q. By whom? A. By the stenographer. 2313

Q. What, that she didn't put the assignment in? A. That's right.

Q. Well, you looked it over after she typed it up? A. Well, that was done quite hurriedly and it had to be filed before 12 o'clock on Saturday morning, and there was quite a rush in trying to get all the papers filed in order to stay the sale.

Q. Didn't you tell me a few moments ago that that may have been prepared on April 2nd? A. I said it may have been prepared in the late afternoon—

Q. Of April 2? A. Of April 2 or April 3.

2314 Q. Yes? A. Or the morning of April 3.

Q. Or you also said that it may have been prepared on April 2. A. That is right.

Q. The day prior to April 3 on which it was filed, is that correct? A. It may be. I don't know; I am not sure at this time.

Q. Well, at least you had an opportunity of looking it over, didn't you? A. I did not.

Q. You never looked this over? A. Probably when it was being signed I may have glanced at hurriedly.

Q. Well, at least you knew that they had an act of bankruptcy, otherwise the petition would be no good? A. Well,
2315 our girls know, in preparing petitions, that they allege allegations 1 and 2.

Q. Well, on the same day when you were preparing the notice—the affidavit and notice of motion to stay the sale,—there you allege that he has filed a petition or an assignment for the benefit of creditors, didn't you? A. I did.

Q. And did you look that over carefully or does your girl know how to draw that up, too? A. No. That I examined carefully.

Q. You had to give her the information? A. I did.

Q. Did the girl know that Abraham Schwartz and Samuel Zuckerman were going to be petitioning creditors? A. She
2316 did.

Q. Who gave it to her? A. I did.

Q. Did the girl know that Nathan Ribach and Samuel Mantis were going to be petitioning creditors? A. She did.

Q. You dictated that too, didn't you? A. I did.

Q. Well, how do you usually dictate a form? Don't you say "Fill out the form and the petitioning creditors and this act of bankruptcy"? A. I usually give the girl as much information that I think she needs in the preparation of the petition and she prepares it.

Q. Well, what information do you think she needs in

the preparation of an involuntary petition in bankruptcy? A. She needs the district in which the petition is to be filed, the name of the alleged bankrupt, the names of the petitioning creditors and the amounts of their respective claims, the nature of the business in which the alleged bankrupt was engaged in, the location of the business, and the names of the individuals who are to sign the petition and the acts of bankruptcy. 2317

Q. So you told her what to put in for the acts of bankruptcy? A. I had dictated the petition and order for the stay in which I related to her and dictated to her the making of the assignment, that, in addition to the other printed form or the usual form of allegations that we make in every petition, act 1 and 2. I had assumed she would put it in. 2318

Q. You had assumed that she would put in the fact—No. 6? A. That's right.

Q. But you looked it over and you found out that she did not put it in? A. I did not notice it at the time the petition was filed or prior to the time it was filed.

Q. Well, you have had quite a little experience, have you not, Mr. Goldberg, in drawing involuntary petitions in bankruptcy up, haven't you? A. I have.

Q. You have also had quite a little bit of experience in assignment work? A. I have.

Q. As a matter of fact, you are quite expert, are you not? A. Well, I consider myself— 2319

Q. With due modesty? A. I beg your pardon?

Q. With due modesty. A. Yes, sir.

Q. You have testified on prior occasions that you consider yourself an expert in insolvency proceedings, haven't you? A. Well, I do. I consider—

Q. Have you testified to that before? A. I have.

Q. So you know what constitutes an act of bankruptcy, don't you? A. I do.

Q. Now isn't it a fact, Mr. Goldman, that had you in-

2320 serted that on or about the 24th day of March that the bankrupt made an assignment for the benefit of creditors, and if you had put that allegation in you could not dismiss the petition without sending notice to all the creditors? Can you answer that question yes or no? A. That is right.

Q. That is correct? A. That is correct.

Q. But with this you do not have to send notices out because that is a jurisdictional defect or it does not state facts sufficient to create or constitute an act of bankruptcy? Isn't that a fact? A. I think that petition is perfectly valid in the manner in which it is drawn.

2321 Q. I never disputed that, and I don't dispute it now, but I ask you whether or not the reason that you did not put in, on this petition, Nos. 1 and 2, the fact that that does not constitute sufficient facts when brought to the attention of the court and therefore it can be dismissed on motion which was subsequently done? A. Well, that is just—

The Witness: Will you read that question again, please?

Q. I will reframe the question. Perhaps it wasn't clear. Now you did make a motion, did you not, on or about

2322 May 6th, 1937, or prepared the papers for a motion, Government's Exhibit 3, on or about May 6th, 1937, to dismiss this petition in bankruptcy? A. I did.

Q. And that motion was granted? A. It was.

Q. And there was no notice sent to any creditors; it wasn't necessary? A. To the individual creditors?

Q. Yes. A. No, sir.

Q. That wasn't necessary, was it? A. No, sir.

Q. Now my question is this: Had you inserted in 6 that an assignment for the benefit of creditors had been filed by this bankrupt, could you have made the same mo-

tion without notice to creditors? A. A motion could have been made but instead it would have to be done by order to show cause. 2323

Q. To all of the— A. The judge in all likelihood would probably provide for service on all—

Q. On all creditors? A. On all creditors.

Q. And isn't that the reason that you, knowing that this petition would be dismissed subsequently did not insert it in No. 6 that the act of bankruptcy was the assignment for the benefit of creditors? A. That is not so.

Q. When you drew this motion did you look up the law in it or did you speak to anyone about it? A. I looked up the law. 2324

Q. You did? This is the one, this is the affidavit of Jacob Schulman, in the matter of the First 88 Cent Stores that I am referring to, and also Government's Exhibit 3, and I ask you whether or not those affidavits, so far as the law is concerned, are not exactly the same?

Mr. Corbin: I object to it as irrelevant and immaterial.

Mr. Walsh: I think it is proper in view of my former question, whether or not he did not consult with Mr. Schulman on that:

The Court: This is with reference to the 88 Stores? 2325

Mr. Walsh: The 88 Stores that Mr. Schulman testified to, and they are the exact same—duplicate affidavits so far as the law is concerned.

The Court: I will sustain the objection to that, gentlemen. I think you are getting off into a remote field, and it would go into the trial of the 88 Cent Stores case. I will state the law to the jury at the case's conclusion.

Mr. Walsh: Well, the only purpose, if your Honor please, that I was going to ask him that question—

2326 Mr. Corbin: I object to any statement of its purpose.

The Court: Yes. I think I see your purpose, Mr. Walsh, but there is a line—

Mr. Walsh: Very well. I won't press it, if your Honor please.

The Court: Very well. I will sustain the objection.

Q. Did you know that Schulman was going over to the federal court on April 5th for an argument before Judge Coxe based on that stay that you had drawn up? A. Yes.

2327 Q. Did he communicate with you and tell you that? A. He did.

Q. And after the meeting did he communicate with you then? A. I don't recall him talking to me about it.

Q. Well, did he tell you that this fellow Hoffman had made certain allegations to Judge Coxe concerning your brother, Martin Goldman's acts in this case? A. Never told me about it.

Q. He never did? A. No, sir.

Q. Well, did you know that your brother went over to Schulman's office on April 7th? A. I did not.

Q. Well, did you have any conversation with Mr.—your

2328 brother Martin concerning the action before Judge Coxe? A. No, sir.

Q. You never did at any time? A. No, sir.

Q. Was a receiver ever appointed pursuant to the filing of this involuntary petition in bankruptcy? A. No receiver was appointed; no application was made.

Q. Who makes the application? A. Any creditor can make an application for the appointment of a receiver.

Q. I know that, but isn't it usually the function of the petitioning creditors' attorney to make an application for the receiver? A. Not necessarily.

Q. Well, for the purpose of conserving the assets—I know it isn't "necessarily," but isn't it usual? A. Sometimes as a rule— 2329

Q. Isn't it usual, Mr. Goldman? A. As a rule the attorney for the petitioning creditors—

Q. Requests the receiver? A. If he deems it necessary, usually makes the application for the appointment of a receiver.

Q. And a petitioning creditor or the attorney for a petitioning creditor could never be the receiver or the trustee, could he? It isn't the usual practice? A. I don't think the judges in this district do that.

Q. What is that? A. I don't think the judges do that. 2330

Q. That is what I say— A. Appoint the attorney for the petitioning creditors as receiver.

Q. They never do it, do they? A. I have never heard of one.

Q. Isn't it a fact that at one of the meetings after a receiver has been appointed they have a meeting of creditors and then the creditors elect the trustee? A. That's right.

Q. Was it your purpose to have Mr. Schulman act as the attorney for the petitioning creditors and then have the firm of Goldman, Malter & Goldman act as the trustee in this particular case? A. No, sir.

Q. That was never discussed? A. It was never discussed, and furthermore the attorney for the petitioning creditors can become the trustee. There is no disqualification. 2331

Q. Well, was that discussed at any time between you and Mr. Schulman? A. Never was.

Q. Now, Mr. Goldman, do you still say that you didn't look over the petition, Government's Exhibit 3, and notice that the No. 6 was not filled in?

Mr. Corbin: Now I object to it "whether he still says it or not."

The Court: I will sustain the objection.

2332 Q. You appeared before the grand jury voluntarily, didn't you? A. I requested to appear before the grand jury.

Q. And you were given an oath when you appeared before the grand jury, were you not? A. I was.

Q. And it is almost the same oath when you appeared in this court? A. That is right.

Q. Is that correct? A. That is correct.

Q. When you appeared before the grand jury, was this question asked you:

"Q. What happened next? A. Mr. Schulman then sent the papers down to our client. I believe the client signed
2333 them and they were filed the following day."

Do you remember that question being asked you? A. I do.

Q. And do you remember making that answer?

Mr. Corbin: Wait. May I have the record show what counsel is reading from?

Mr. Walsh: Page 80 of the grand jury minutes.

Mr. Corbin: The official transcript?

Mr. Walsh: The official transcript, yes, sir.

Mr. Corbin: May I ask that that be marked for identification so that—

2334 Mr. Walsh: As I read from any page, Mr. Corbin, I will mention the number of the page and there won't be any question.

Mr. Corbin: I want the testimony of this witness from which he is reading, that particular part of it, that paper, marked so that we will know.

The Court: Yes. Very well, let it be marked.

Mr. Corbin: For identification.

The Court: For identification.

(Marked Government's Exhibit 24 for identification.)

Mr. Walsh: That page, page 80. That is what I 2335
am reading from.

Mr. Corbin: For the present.

Mr. Walsh: That page.

Mr. Corbin: Yes. Now I object to the question upon the ground that it was not in derogation or conflict with anything that the witness has testified to.

The Court: I will overrule the objection.

Mr. Corbin: Exception.

Q. Do you remember my question? If not, Mr. Stenographer, will you kindly read it.

Q. (Read.) A. I do. 2336

Q. The next question: "Q. Did Mr. Schulman confer with you about the papers that were to be drawn up? A. No." Do you remember being asked that question and do you remember making that answer? A. I do.

Q. Did you make that answer? A. I did.

Q. And was it true at that time? A. At that time it was.

Q. This was on January 14, 1940? A. I think that is the approximate date.

Q. That is the date that you appeared before the grand jury? A. Yes.

Q. And at that time it was true? A. I believed it to be true and that was my best recollection at that time. 2337

Q. The next question: "Q. Did Mr. Schulman show them to you? A. I don't remember seeing the petition." Do you remember that question being asked you and did you make that answer? A. I did.

Q. And was it true at that time? A. It was.

Q. But now it is not true. A. No. I don't say it isn't true. I say that at that time—

Q. Well, it is contrary to the testimony that you are giving now under oath, is it not? A. It is.

Q. And the first time that you found out that it was untrue is when the four defendants got together—

2338 Mr. Corbin: That's right.

Mr. Walsh: I know. I didn't want to say anything.

Mr. Corbin: That is right. Schulman showed him he was wrong.

Mr. Walsh: Wait a second.

Will you read what I have said thus far?

Q. (Read.) —at Corbin's office, and Schulman wouldn't admit that it was prepared in his office; isn't that the fact? A. No, sir.

Q. Didn't Schulman say that he wasn't going to be the
2339 goat in this thing all through? A. No, sir.

Q. That he wasn't going to take all the responsibility? A. No, sir.

Mr. Walsh: I am still reading from page 80, if your Honor please.

The Court: Very well.

Q. Do you remember being asked this question and do you remember making this answer: "Q. Do you not remember seeing the petition? A. No. I didn't see it until some time after it was filed."

2340 Was that true when you made that statement? A. At that time it was true.

Q. The next question: "Q. Are you absolutely sure of the fact that you didn't see it before it was filed? A. I am pretty certain. I did not. I don't remember seeing because I know Mr. Schulman has handled cases of this type and I would not question his preparing it properly. I don't remember seeing it. It may have been sent to the office."

Do you remember making that answer to that question? A. I do.

Q. And was that true? A. At that time I believed it to be so.

Q. I am now reading from page 82— 2341

Mr. Walsh: Do you want that marked, too?

Mr. Corbin: No.

Mr. Walsh: I will mark each page that I am reading from.

Mr. Corbin: I won't bother with that, but I am going to claim the right to examine the entire transcript of this witness's testimony.

The Court: Very well. Let the entire transcript be marked for identification, the testimony that this witness gave before the grand jury, and then you can refer, Mr. Walsh, to whatever page your question refers to. 2342

(Marked Government's Exhibit 25 for identification.)

Mr. Walsh: On page 82.

Q. "Q. You are definite, you did not see that petition before it was filed? A. That is right." Is that true now? A. No, sir.

Q. Was it true then? A. It was.

Q. "Q. You would let your client sign it without having seen it? A. Yes." Was that true then? A. It was.

Q. Is it true now? A. No. 2343

Q. "Q. Where did your client see it? A. I believe at his place of business." Were you asked that question and did you make that answer? A. I did.

Q. And was it true then? A. It was.

Q. And is it true now? A. No.

Q. And that all was refreshed at the meeting when you, Kandell, Martin Goldman and Schulman were together—

Mr. Corbin: And Corbin.

Q. —and Corbin and Bennett and Mr. Fielding and Mr. Mintzer, I presume?

2344 Mr. Fielding: Not Mr. Fielding.

Mr. Walsh: No. Well, I don't want to start an argument with you gentlemen.

Mr. Corbin: Mintzer was.

Q. Now you remember also that on another occasion you testified before the Honorable Jacob Marks, did you not? A. I did.

Q. And were you administered an oath to tell the truth, the whole truth and nothing but the truth at that time, too? A. Yes, sir.

Q. The same oath that you took before the grand jury?

2345 A. Yes, sir.

Q. And the same oath that you took in this present trial? A. Yes, sir.

Q. To tell the truth? A. Yes, sir.

Mr. Corbin: I will concede that he testified there—

Mr. Walsh: Will you concede also that he testified under oath—well, I do not want any concessions from you so far as this witness's testimony is concerned.

Mr. Corbin: Oh, I thought you did. Well, I will concede if you want it. If you don't, all right, that

2346 he did not testify that he prepared the petition. I think I asked him on direct about it.

Q. In any event, on two occasions when you were under oath you testified that you had never seen the petition, that you did not prepare the petition, is that correct? A. I think that was my testimony at that time, and I so believed it to be the fact.

Q. And that was the fact at that time? A. Yes, sir.

Mr. Walsh: I am reading now, Mr. Corbin, from page 84.

The Court: Of the grand jury minutes?

Mr. Walsh: Of the grand jury minutes, January 17, 1940. 2347

Q. Were you asked this question, Mr. Goldman, and did you make this answer: "Q. And you find that you were misstating the case before Referee Marks, is that it? A. I had not had an opportunity to refresh my recollection when I testified in that proceeding. When I was in there"—and two dashes, Mr. Fielding—"I had the file on my desk, Mr. Malter said I would have to go over and testify that afternoon about two o'clock, and told me a day or two before, and I put the file on my desk anticipating that I would go through it that morning." 2348

Do you remember being asked that question? A. I do.

Q. And did you make that answer? A. I did.

Q. And was it true at that time? A. It was.

Mr. Corbin: What was that?

Mr. Walsh: That was the hearing before Referee Marks.

Mr. Corbin: What was it that he said before Marks that he said before the grand jury?

Mr. Walsh: That he had not had an opportunity of refreshing his recollection but that he put his file— 2349

Mr. Corbin: About what?

Mr. Walsh: That he put his file—"put the file on my desk anticipating that I would go through it that morning."

Q. "Q. Now, you have your file with you? A. Yes."

Mr. Corbin: I don't understand it.

Mr. Walsh: Well, it will be very clear in a moment, I hope.

Mr. Corbin: All right.

350 Q. I will continue reading—

Mr. Corbin: Because whatever that relates to, Judge, it must be something that was asked the witness so far.

Mr. Walsh: It does.

Mr. Corbin: So that the reading of the grand jury minutes doesn't tend to contradict the witness in that regard.

Mr. Walsh: Page 86 of the grand jury minutes, Government's Exhibit 25 for identification.

The Court: Do you mean by that, Mr. Corbin,
351 that you make an objection to the last question that was asked him?

Mr. Corbin: Yes.

The Court: Wherein, Mr. Walsh, does that contradict any of his present testimony? I don't recall myself. Of course it is impossible to recall all of the testimony from time to time.

Mr. Walsh: Well, he said that the reason that he gave in the grand jury was that he did not have an opportunity of refreshing his recollection when he testified before Referee Marks, and I want to know whether or not that was true, that he did not have
352 an opportunity of refreshing his recollection when he testified before Judge Marks.

Mr. Corbin: About what?

Mr. Walsh: About the testimony before Judge Marks when he denied having prepared or having seen the petition in bankruptcy.

The Court: I will overrule the objection, Mr. Corbin.

Mr. Corbin: I except.

Mr. Walsh: And then there was this question on page 86.

Q. "Q. Mr. Goldman, if you don't mind my interrupting, this is really not quite relevant to the point we are now discussing, which is just when you saw the petition first. Have you anything to add regarding the question when you saw that petition first? A. Nothing further than what I said." Do you remember that colloquy? A. I do.

Q. At the grand jury? A. Yes.

Q. And was it true and is that what was said to you and is that what you said? A. That is right.

Q. "Q. And that is that you didn't see the petition before it was filed? A. That's right.

"Q. And that you remembered his about two and a half years after the event but that you didn't remember it about a year after the event, is that right? A. That's right, I had not looked at the file at that time."

I am now reading from page 84:

"Q. Now, you have your file with you? A. Yes.

"Q. Would you go through your file and show the grand jury just what it was that gave you the idea that you had not seen the petition before it was filed? A. I came across the file—the notice of motion and affidavit that I had prepared on behalf of Mr. Hoffman in connection with the motion to dismiss the petition, and attached to those motion papers was a copy of the involuntary petition, and I had then recalled that it was when I had the conversation with Mr. Hoffman and he had requested that I prepare these papers for him and that it was—when I first got a copy of the petition at that time to make the motion that I first saw the objection to the petition."

Do you remember saying that? A. I do.

Q. And at that time when you were testifying before the grand jury on January 17, 1940, you had your whole file with you. Is that a fact? A. I did have the file with me.

Q. And you said that refreshed your recollection, that

2356 the first time that you saw the petition when you made the motion to dismiss the petition—is that the explanation that you gave the grand jury? A. That is not. The question was when I first noticed that the petition did not contain the allegation that an assignment for the benefit of creditors had been made, and I testified that the first time I noticed it was when I—when I was arranging to prepare the motion papers to dismiss the petition.

Mr. Walsh: May we have a recess now for about two minutes?

The Court: Yes. We will take one for about six minutes.

2357 (Short recess.)

Q. Do you remember, Mr. Goldman, that I asked you the question whether or not you had consulted with Mr. Schulman prior to April 2, 1937, and you said that you had not; is that correct? A. That is right.

Q. Do you remember when you were before Referee Marks you were on the stand and you had taken an oath when you testified in this proceeding, is that right? A. That is right.

Q. And this question was asked you:

2358 "Q. When did you first consult with Mr. Schulman, or talk to him about this case? And it refers to the Hymowitz case, is that right? A. Right. That was shortly after that assignment for the benefit of creditors was filed."

Q. Do you remember being asked that question and did you make that reply? A. I do.

Q. Was it true then? A. At that time I so believed.

Q. And is it true now? A. No, sir.

Q. "Q. You say shortly after the assignment was filed? A. Yes, sir."

Do you remember being asked that question and making that reply? A. I do.

Q. Was it true then? A. It was. 2359

Q. Is it true now? A. No, sir.

Q. Well, you just testified on direct examination, did you not, today, that you had not consulted with Mr. Schulman prior to April 2, 1937? A. That is right.

Q. "Q. How many times between that time, that is, the first time and that time just before the petition was filed, did you consult with him? A. I don't remember the number of occasions."

Do you remember being asked that question and did you make that answer? A. I did.

Q. The next question by the referee:

"Q. Every day? A. No. It may have been on four or 2360
five occasions."

Did you make that answer on that occasion? A. I did.

Q. In other words, you testified today that you had not seen Schulman prior to April 2nd, the day that the petition was filed? A. That is correct.

Q. And in this testimony you said that you had conferred with him on four or five different occasions. Now which is true? What you testified today, that you had not consulted with him, or had you consulted with him prior to April 2, 1937? A. At the time that I testified before Referee Marks I think I pointed out that I didn't have any of the 2361
papers with me and I had nothing to refresh my recollection, and at that time I believed—

Q. You were under oath on that occasion, were you not?

Mr. Corbin: Let him finish his answer.

Mr. Walsh: I will be happy to do so.

A. (Continued) I was under oath, and at that time I believed the testimony I gave to be true, and the testimony I gave today is true.

Q. But before Referee Marks on April 1, 1938, your

2362 recollection at that time was better than it is now, isn't that a fact? A. With respect to certain things.

Q. Well, was your memory better with respect to the number of occasions you consulted with Schulman after the assignment for the benefit of creditors and prior to the filing of the petition in bankruptcy? A. I referred at that time to all the occasions or conferences I had, whether before the petition was filed or thereafter, in connection with the dismissal of the petition.

Q. Didn't you hear me read this question and wasn't it specific:

2363 You were asked how many times and how many occasions had you consulted with Schulman between the assignment for the benefit of creditors and the filing of the petition in bankruptcy and you said four or five times. A. Well, I was mistaken at that time.

Q. That was in 1938, wasn't it? A. That is right.

Q. And was your memory better on that occasion than it was today when you were on the stand when you denied you had ever consulted with Mr. Schulman prior to April 2, 1937? A. My memory is much better today with regard to those facts.

Q. It is? A. Yes, sir.

2364 Q. Is it a fact that your memory is better today that you had a conference with Hoffman, Wishbow and Morton Goldman, and you made the story fit the facts that you were going to testify to—

Mr. Corbin: That last question, I see, has left me out.

Mr. Walsh: Right, Mr. Corbin.

A. At Mr. Corbin's office and Mr. Corbin was there.

Redirect examination by Mr. Corbin: 2365

Q. There was not any framing—

Mr. Walsh: I have not indicated by any word or action that Mr. Corbin framed anything. He was not present at all the times they were discussing it.

Q. About this conference down there in my office, what is the fact as to whether you and Schulman disagreed there as to whether you or he had prepared that petition? A. We did disagree.

Q. And there was quite a little bit of talk about it, you saying one thing and he the other? A. That is right. 2366

Q. Is it or is it not a fact—

Mr. Walsh: I object to this form as leading, if your Honor please.

The Court: Objection overruled.

Q. Is it or is it not a fact that you then and there came to the realization that he was right and you were wrong about your having given it to your girl to fill in? A. That is so.

Q. Up to that time had you honestly believed that the testimony that you had given before was accurate? 2367

Mr. Walsh: I object to the characterization of "honestly."

The Court: Objection sustained.

Mr. Corbin: Exception.

Q. Did you or did you not intend at the time when you testified before the Grand Jury to tell the truth?

Mr. Walsh: I object to that as calling for a conclusion. The fact is the record speaks for itself as to what he intended.

The Court: I will overrule the objection.

2368 Q. You intended to tell the truth? A. Yes, sir, I did.

Q. And you stated you did prepare it yourself, although it bears Schulman's name; you realize now that is the fact? A. That is the fact.

Mr. Corbin: That is all there is to that.

Mr. Walsh: I object to that last remark and ask that it be stricken from the record.

The Court: Motion granted.

Q. When you were before the Grand Judy, that was nearly three years after the occurrence? A. That is right.

2369 Q. And on the other occasion when you testified before the referee, was close to a year after the occurrence? A. Yes, sir.

Q. At that time you had left the office, according to what has been read to you by Mr. Walsh, without your papers, you didn't have them there with you? A. That is right.

Q. From the beginning to the end of the Hymowitz matter you and your firm represented this man Harry Levy, is that the truth? A. Yes, sir.

Q. The one who was a witness here this morning? A. That is right.

Q. Did you regard that you had a duty to perform at

2370 all times toward him and to him? A. I did.

Q. Did you in anything you did in that entire period act in what you believed to be your duty to your client? A. I did.

Q. Did you agree to do anything at any time that in your judgment was against his best interests as a creditor? A. I did not.

Mr. Corbin: About those letters, here are copies of them. I ask that they be marked together as one exhibit.

(Marked Defendants' Exhibit E for identification.)

Q. I show you these two letters and ask you if on or about the date they bear, April 1, 1937, you wrote and sent the originals of those respectively to the addressee (handing to witness). 2371

Mr. Walsh: I object to where they were sent.

The Court: Let me see them.

(Letters handed to the Court.)

Mr. Corbin: The subject was brought up on cross examination, sending the claim to his client to sign.

The Court: What is the ground of your objection?

Mr. Walsh: I merely object to the form of the question. He offered them in evidence. I have not seen the letters. If I may see them I might not object. 2372

(Papers handed to Mr. Walsh.)

Mr. Walsh: I object in the first place, on the ground that it is improper redirect examination.

The Court: I will let him reopen the case if there is competent testimony. If counsel objects to them, that the carbon copies have been unaccounted for, I will think it over.

Mr. Walsh: I object on the ground that a proper foundation has not been laid for the introduction of these letters in evidence. 2373

Mr. Corbin: Let me go a little further then, Judge.

Mr. Walsh: And also that these are not the original letters.

The Court: I will reserve decision on it for the time being.

Q. Do you recall on cross examination Mr. Walsh asked you about sending a number of claims to your client, Mr. Harry Levy? A. I do.

2374 Q. I show you first a letter, one of the two letters comprising this Exhibit E for identification, which purports to be dated April 1st—

Mr. Walsh: I withdraw my objection, your Honor.

Mr. Corbin: I can get along.

Mr. Walsh: I know you can, but I will save you the time.

Mr. Corbin: All right.

(Defendants' Exhibit E for identification received in evidence.)

2375 (Mr. Corbin read Defendants' Exhibit E to the jury.)

Mr. Corbin: That is all.

Recross examination by Mr. Walsh:

Q. Mr. Goldman, when you testified before Referee Marks under oath did you intend to fool the referee? A. I did not.

Q. When you testified under oath before the Grand Jury for the Southern District of New York did you intend to fool that body? A. I did not.

Q. Do you intend to fool this body? A. No, sir.

2376 Q. You are under oath now? A. I am.

Redirect examination by Mr. Corbin:

Q. You are sure of that? A. Yes, sir; I said so.

Mr. Corbin: That is all.

(Witness excused.)

ABRAHAM SCHWARTZ, called as a witness on behalf of the 2377
defendants, being duly sworn, testified as follows:

Direct examination by Mr. Fielding:

Q. Where do you live, Mr. Schwartz? A. 557 Bedford Avenue, Brooklyn.

Q. Are you a partner in the firm of Schwartz & Zuckerman? A. Yes.

Q. Did you have any business relations with Paul Hymowitz? A. Yes, sir.

Q. By the way, where was your place of business at that time? A. 15 Orchard Street.

Q. Do you know the members of the firm of Ribach & 2378
Mantis? A. Yes, sir.

Q. And where was their store? A. 17 Orchard Street.

Q. That is right next door? A. Yes, sir.

Q. Do you recall in April of 1937 that something transpired with relation to an obligation of Paul Hymowitz to your firm? A. Yes, sir.

Q. Will you state what happened and what you did? A. We received a letter for a meeting of creditors.

Q. From whom did you get that letter? A. I think that was from a lawyer for the assignee in Paul Hymowitz's case.

Q. Robert Hoffman? A. Robert Hoffman. 2379

Q. And the assignee was Cohen? A. I don't remember that name.

Q. And what did that notice tell you? A. The notice called for a meeting in the letter, telling us you see that we should get, realize about 80 per cent, if you will let him go through the assignment at that time, to sell the assets through the assignee.

Q. Did they call a meeting of creditors? A. Yes, sir.

Q. Did you attend? A. Yes, sir.

Q. Mr. Schulman was not there? A. Not at that time.

Q. And who else was at that meeting? A. Mr. Mantis.

2380 a creditor, and also a man by the name of Mr. Kreiselman, also a merchandise creditor from Orchard Street.

Q. At that time did you have an attorney? A. I didn't have any.

Q. Did you know Mr. Schulman? A. Yes, sir.

Q. Had you ever employed Mr. Schulman prior to this time? A. Yes, sir.

Q. How long before that? A. Oh, about ten or twelve years.

Q. And he handled a great many of your merchandise matters? A. Yes, sir.

Q. Do you know Ribach & Mantis were clients of his?

2381 A. Yes, sir.

Q. What happened at the creditors' meeting, insofar as a discussion taking place about selling these assets through the assignee? A. Well, Mr. Hoffman was there and there was an auctioneer. There were also a few other representatives of creditors. Mr. Kandell, whom I knew, and Mr. Goldman; that is the first time I ever met him there—

Q. That is Martin Goldman? A. I don't know his exact name.

Mr. Fielding: Will you stand up? Is that the gentleman?

The Witness: I cannot really recollect.

2382

Mr. Walsh: We will concede it was Martin Goldman.

The Witness: It was one of the Goldmans, the first time I ever saw him at that time and at that time Mr. Hoffman, the lawyer, want that we should sell out, advising us to sell out the assets, this assignee promising that he would realize for us about 80 per cent.

Q. What did you do and the other creditors? A. I personally asked Mr. Hoffman whether he could assure us of

the amount of percentage and to be guaranteed, so that we would then know what we could realize. 2383

Q. What did he say to that? A. He said no, but he thinks it will get us about 80 per cent.

Q. What did you say? A. I told him he should take in one of our merchandise creditors as co-assignee so that we will be more sure that the assets will be taken care of.

Q. What did he respond to that? A. He said he wouldn't do that under no circumstances.

Q. He would not permit any of the creditors to come into the assignment proceedings? A. No, he would not.

Q. Did you later communicate with Mr. Schulman? A. Yes sir. 2384

Q. What did you tell him? A. I explained to Mr. Schulman the situation.

Q. What did you tell him? A. I told him Mr. Hoffman was at the meeting we had and at that time he told us to give the key to send up our own auctioneer, to see, to appraise the stock, whatever was the value of it, because he at that time said it was worth so much money.

Q. How much money did he say it was worth? A. At the meeting $2500 he said. Then I called up Mr. Schulman and I told him about it, that Mr. Hoffman had said as it was there, that the stock was worth so much, and 2385 he said that at that time, if you allow him to go through with the sale the creditors will realize about $1200, in amount, and if it goes through bankruptcy we creditors would lose a certain amount of money than if the individual assignee took care of it.

Q. You told that to Mr. Schulman? A. Yes, sir, and then Mr. Hoffman made the offer to let us into the store, to bring in our own auctioneer.

A couple of days passed and we kept calling him, day in and day out, before we succeeded at a certain hour to see the stock.

2386 Q. You called Hoffman's office a number of times and could not get him? A. Could not get him.

Q. And is it not a fact you could not get the store opened? A. That is right.

Q. And you sent an appraiser there? A. Yes, sir, I called up an appraiser, an auctioneer, to go down and see that stock.

Q. Who was it? A. I think Nicolmeyer.

Mr. Walsh: I would like to hear what this witness remembers himself.

Mr. Fielding: That is only part of the name.

2387 Mr. Walsh: We will take his answer. It is all right with me.

Q. Did he go down to look the stock over? A. Yes, sir, I met him there.

Q. You went there to the store yourself? A. For a few minutes.

Q. At the time the auctioneer was there? A. Yes, sir.

Q. What figure did he say was the value of the stock? A. He thought the value for all of it would be about $1100, for the stock.

Q. You brought that information back to Schulman? A.

2388 Yes, sir.

Q. Did you get a telephone call on Saturday morning, on April 5, from Schulman? A. No, sir.

Q. Did you call him up? A. No, it was Friday, not Saturday.

Q. All right. What happened? A. Well, I called up Mr. Schulman at that time and told him the entire thing about it, and I told him I have got Mr. Mantis near me, and I think if we decide as to a sufficient amount of creditors, that if Goldman could get some creditors then the assignment would go through, although some of them preferred bankruptcy.

Q. Did you authorize Mr. Schulman to start bankruptcy proceedings for you? A. Yes, sir. 2389

Q. Did you authorize him to sign your name to the petition? A. Yes, sir.

Q. At the time that took place, was Mr. Mantis standing alongside of you, in your store? A. Yes, sir.

Q. Did you speak to Mantis about it? A. Yes, sir.

Mr. Walsh: I object to all of these leading questions.

The Court: Sustained.

Q. What did Mantis say? A. Mantis spoke to Mr. Schulman in my presence and said he authorized him to insert his signature, too. 2390

Q. Did you ever hear about the dismissal of the petition in bankruptcy? A. Yes, sir.

Q. Who told you about it? A. Mr. Schulman.

Q. Any objection on your part? A. No, sir.

Q. Did you also understand that the assignment proceeding was to be dismissed or disposed of? A. Yes, sir.

Q. Was that satisfactory to you? A. Yes, sir.

Q. Those few steps meant the carrying out of the sale of the assets in bulk?

Mr. Walsh: I object to that. 2391

The Court: Sustained.

Mr. Walsh: Let him testify, not you.

Mr. Fielding: Your witness.

Cross examination by Mr. Walsh:

Q. When did you first learn, Mr. Schwartz, that the petition in bankruptcy was dismissed? A. When it was dismissed, I didn't know it.

Q. Who told you? A. I didn't know when it was dismissed, the time it was dismissed.

2392 Q. Did Schulman tell you he was going to dismiss it? A. Yes, sir.

Q. When? A. Well, it was after the bankruptcy, it was after the hearing before a certain court, before a certain Judge Knox—I don't remember the name at that time.

Q. Were you there? A. Yes, I was there, and Mantis and Mr. Kreiselman and all of the creditors for the merchandise.

Q. How did you go down there? A. By taxi.

Q. Who called you up and told you to go down there? A. Mr. Schulman.

Q. What did he tell you? A. He tell me to appear be-
2393 fore Judge Knox or some judge in the matter of that bankruptcy matter, for a hearing.

Q. What did you do? A. I was out there.

Q. Did Mr. Schulman call you up personally? A. Yes, sir.

Q. And what did you do? A. Then I went.

Q. Well, did you communicate with Mr. Mantis? A. Well, we are all in the neighborhood, altogether, one block.

Q. I know that. Did Mr. Schulman call Mr. Mantis up? A. I cannot recollect whether I called Mantis or he called me. We are all there in the same neighborhood.

2394 Q. Who got Kreiselman? A. I cannot recollect. We are all in the same block, or were at that time.

Q. Now you say your attorney told you that the petition in bankruptcy was going to be dismissed? A. Yes, sir.

Q. You don't remember, do you, what he said? A. I remember he told me it was going to be dismissed on a certain basis of 40 per cent basis in cash, and a settlement that we were going to receive on it.

Q. Do you remember that you were down at the United States Attorney's office on April 25, 1938, do you remember that? A. Yes, sir.

Q. And had a conversation with one of the assistants there? A. Yes, sir. 2395

Q. And when you received a dividend, how much was the dividend, incidentally? A. Not more than I expected to get. I suppose that I was to get 40 per cent but I only got 17 per cent.

Q. Hoffman promised you 40 per cent? A. No, lawyers in assignment cases promise you more than you get. In my past experience, in business, I never received any such dividend for assignment. I have received notices of assignment like this in the last two weeks, and I would not get a button out of it.

Q. What do you think is the best proceedure, to have it thrown into bankruptcy, and then let the federal court handle it? A. In my opinion? 2396

Q. Yes. A. My opinion is we always take a cash settlement, preferably a cash settlement, always accept it, but in a case like this, it appears to be better to throw it into bankruptcy, to protect all the assets. Besides if anyone wants to stick in business, to remain in business, and he can offer us a sufficient amount we would rather give him a chance to stay in business.

Q. Were you a subscriber to the Dry Goods Association? A. About ten or twelve years ago.

Q. When you get into difficulties do you usually refer your claims to them? A. No—at that time? 2397

Q. Yes. A. About twelve years ago.

Q. In 1937? A. The Dry Goods Association?

Q. Did you know Mr. Kandell? A. I knew Mr. Kandell.

Q. Did you ever refer to him any of your collection items? A. No, not since I didn't belong to them.

Q. Your memory was better in 1938 than it is today? A. In reference to what?

Q. I mean so far as the facts in this case are concerned.

2398 Do you remember this question being asked of you, Mr. Schwartz, and did you make this answer:— A. Well, now, was that in bankruptcy?

Q. "Q. Was that a dividend before bankruptcy? A. It was supposed to be, to my knowledge."

Do you remember that question being asked you and did you make that answer? A. It was supposed to be—to my knowledge what?

Q. That it was a dividend in bankruptcy. A. This one here?

Q. The dividend you got in the Hymowitz case, that is what you said in 1938. A. If it comes to that, if any merchandise storekeeper has been sold out for any kind of trouble, whether it has anything, we consider it like a bankruptcy.

2399

Q. Now I am going to repeat what is down here. I was not there. "A. It was supposed to be, to my knowledge." The question was, "Was that in bankruptcy?" and you said "It was supposed to be, to my knowledge." Do you remember that? In other words, "it was supposed to be to my knowledge in bankruptcy." A. I said bankruptcy if selling out, even to any auctioneer it is a bankruptcy to me.

2400

Q. Well, the next question was this, "Q. Didn't you know that the case was thrown out of the bankruptcy court? A. No." Do you remember being asked that question? A. Yes, sir.

Q. And do you remember making that answer? A. Yes, sir.

Q. So far as you knew it was still in bankruptcy at the time you got the dividend? A. I don't know where I got the dividend from. I got 17 per cent, whether through bankruptcy or sold out, I don't know. I don't know where it came from. I was supposed to get 40 per cent, and I only got 17 per cent.

Q. The next question was this, "Q. Didn't your lawyer 2401
tell you that? A. No." Do you remember making that answer, that your lawyer didn't tell you that it was thrown out of the bankruptcy court? A. Afterwards he didn't tell me until later and I never asked him that question.

Q. You made this statement on April 25, 1938, and that is a couple of years ago, and your memory was better then than it is now? You remembered more of this Hymowitz matter in April, 1938, than you do now? A. What is the question about?

Q. I want to know whether or not you remember being asked these questions in April of 1938 and whether or not 2402
you made those answers? A. My recollection is just as good now as at that time.

Q. Well, do you remember this then, "Q. Well, don't you know that the case was thrown out of the bankruptcy court? A. No." Do you remember that? A. I still don't know, except what I heard in the court that it has been thrown out of bankruptcy.

Q. Didn't you know that the case was dismissed from the bankruptcy court and that the assignee was permitted to sell? A. No. I still don't even know today.

Q. In other words, you think it may have gone through bankruptcy? A. Probably, I don't know; I don't know the 2403
procedure they go through to sell it out.

Q. Schulman never told you it was not in bankruptcy? A. Yes, sir, it went through bankruptcy.

Q. You signed the petition? A. I didn't sign the petition. I told him to sign.

Q. Because it was a Saturday? A. It was a Friday.

Q. And you gave him permission to sign? A. Yes, sir.

Q. So you knew it was in bankruptcy at that time? A. Yes, sir.

Q. And you never knew it went out of bankruptcy? A. When it went out of bankruptcy I don't know.

2404 Q. And Schulman never told you that? A. He told me that if the bankruptcy proceedings were dismissed we would get a 40 per cent cash settlement. I said you can go through with it for a 40 per cent cash settlement.

Q. When was that? A. A week or ten days or two weeks later.

Q. By the way, what is the capitalization of your firm? A. It was about a hundred thousand dollars.

Q. Now who is this appraiser that you sent down there? A. The name is like Nicolmeyer. I remember the name, it started with something like "Nicol".

Q. Who recommended that appraiser to you? A. Some
2405 of my neighbors in the block, but they are no good appraisers, auctioneers. Some of them are recommended to me as the best around the section.

Q. Did you pay him anything? A. Did I pay him anything?

Q. Yes. A. What for?

Q. I don't know. I asked you the question, did you pay him? A. I did not.

Q. Your claim was for $88? A. About that amount.

Q. And you got about 17 or 18 per cent out of it? A. Yes, sir.

Q. As a matter of fact you refused to take it? A. Yes.
2406 sir. Mr. Hoffman had to send it to the chamberlain. I returned it to Mr. Schulman. He took care of all my problems. I sent him the check, and he kept it there for about a year's time.

Mr. Walsh: That is all.

(Witness excused.)

SAMUEL IRVING KANDELL, called as a witness on behalf 2407
of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Corbin:

Q. Mr. Kandell, you are one of the men named in this indictment on trial, and as to you it was dismissed at the close of the Government's case by his Honor? A. That is correct.

Q. Do you remember Mr. Hoffman being a witness here on the witness stand in this trial? A. I do.

Q. He referred to a meeting held at your place on March 25, 1937. Were you present at that meeting? A. I was.

Q. That morning you had gone up to Mr. Hoffman's 2408
office with Theodore Goldman, Teddy Goldman? A. I did.

Q. When you were at Hoffman's office in the morning did you or Theodore Goldman, or either of you, threaten bankruptcy? A. We did not.

Q. In the afternoon at the creditors' meeting—will you tell us first very briefly what the discussion was at the creditors' meeting. A. There was a general discussion as to the assets and liabilities, and it is customary for the attorney representing the debtor to usually present his case, and he told us about the assets and liabilities and he told us some details as to what his client, who was in 2409
jail, had caused him to bring about this assignment for the benefit of creditors, and at that time some of the creditors expressed a desire to liquidate this estate, if it were possible, outside of any court procedure, so as to save the expense and realize as much as they possibly could for themselves.

Q. You were there representing whom? A. Butler Bros.

Q. And their claim was about how much? A. Oh, about $170 I believe, or thereabouts.

Q. By the way, what was the approximate total of the claims represented at that creditors' meeting? A. Butler

2410 Bros.' claim would be $470 about, and then you had four petitioning creditors; I don't remember what their claims came up to.

Q. Between $550 and $600, subject to correction. That would make what? A. Close to $1100. And there may have been some other people present, or one person present who represented another creditor. I don't remember.

Q. Do you remember Mr. Goldstein being there? A. I heard his name. It refreshes my memory a bit, but I would not state positively he was there.

Q. What was the basis of your retainer by Butler Bros.? A. Butler Bros. were—well, we have been doing work for
2411 Butler Bros. now for about six years. I might say six or seven years possibly.

Q. You heard about the Hymowitz matter from them or some representative of theirs? A. From Butler Bros.

Q. When with reference to the day you were there with Theodore Goldman? A. The day prior. That would be on or about March 24th, late in the afternoon.

Q. Up at that creditors' meeting, do you remember a meeting outside anywhere that day, at any time that day? Did you hear anything about a proposed arrangement that—

Mr. Walsh: I object to this as leading.

2412 The Court: I will overrule the objection.

Q. That only a part of the money that would be obtained from the buyer would be disclosed to creditors, that the amount that they would show to creditors would be the sum of $1000 or with a couple of hundred dollars or a small sum of money above that to take care of some expenses and the balance, that would be kept secret. Did you hear any such talk? A. At that meeting?

Q. Or outside, after the meeting. A. No, sir.

Mr. Walsh: I object on the ground that it states

facts not in evidence. There is no testimony to the effect that Kandell was out in the outer office. 2413

The Court: I recall the testimony on that. I think it is a competent question. I will overrule the objection.

The Witness: No.

Q. And Mr. Hoffman on his direct examination stated also "that the balance would be kept a secret, would be split between Kandell, me and himself"—himself being Martin Goldman, the difference being between the amount which would be reported to creditors and the amount they would actually obtain from a private buyer. Did you enter 2414 into any such agreement? A. I did not.

Q. Did you hear of any such agreement then or later? A. I did not.

Q. At any time from the 24th of March, when you first heard of the Hymowitz trouble and the time when the matter was completely out of the way, a month later; at any time did you hear of any talk about a secret price that would be kept from the creditors and divided among anybody, you or anybody else? A. I did not.

Q. And then there was some testimony to the effect that after that meeting— 2415

Mr. Walsh: I object to this, your Honor.

Mr. Corbin: I am calling his attention particularly to what was said.

The Court: Overruled. I overrule the objection. He is reading the record there with reference to certain testimony and he is asking this witness whether he heard any such conversation.

Mr. Walsh: Unless he specifies who was present.

Q. The testimony is that after the meeting you and Martin Goldman and Wishbow and Hoffman had a talk

2416 to the effect that $10 would be given to each of the creditors to keep their mouths shut, or something to that effect, that in substance. Were you present at any such conversation? A. No, sir.

Q. Did you hear any such talk then or at any other time? A. I did not.

Q. Did you hear Martin Goldman say in words or substance then or at any other time, "We will throw these creditors $10 apiece to keep their mouths shut"? A. I did not.

Q. Did your know those creditors before that day? A. I knew Mr. Schwartz. I had come in contact with him
2417 on numerous occasions. I don't remember whether Mr. Ribach or Mr. Mantis was there, but there was a gentleman there that I remembered seeing on several occasions; and Kreiselman, I believe that is the first time I ever saw him.

Q. Or Mr. Goldstein? A. Mr. Goldstein I knew. I knew him a great many years.

Q. Whether he was there you don't know? A. I wouldn't say definitely he was there. The first time it was intimated to me was when I heard it here in court.

Q. Well, at that meeting what did Hoffman say about—let me ask you directly this: Didn't Hoffman at that
2418 meeting fix a time for prospective buyers to look at that stock? A. Well, Mr. Hoffman didn't fix the time. It was fixed that the creditors, and I myself made a memorandum of the various hours the creditors present were going to send buyers to look at the stock, and that was told to Mr. Hoffman.

Q. Let me show you a paper—first, let me have it marked for identification.

(Marked Defendants' Exhibit F for identification.)

Q. I show you Defendants' Exhibit F for identification and ask you if you recognize it. A. I do.

Q. What is it? A. This is a schedule of the hours the various creditors represented prospective buyers to look at the stock. 2419

Q. Is that in your handwriting? A. It is in my handwriting, with the exception of the telephone numbers alongside there.

Q. And who wrote that? A. I believe Mr. Cohen wrote those. It looks like his handwriting.

Q. Did you prepare that paper at the time, that is, at that meeting on March 25, 1937? A. Yes, sir.

Mr. Corbin: I offer it in evidence.

Mr. Walsh: I object to it as incompetent, irrelevant and immaterial. 2420

Mr. Corbin: May I ask additional questions, Judge?

The Court: Yes.

Q. Was that paper prepared by you in Mr. Hoffman's presence at that meeting? A. It was prepared in the room where the meeting took place, in everybody's presence, who was at the meeting; each one was represented and everyone was given an opportunity to pick an hour to send somebody down there.

The Court: I will overrule the objection. 2421

(Defendants' Exhibit F for identification received in evidence.)

Q. And a stagger system of time was fixed for them to go down there? A. That is correct.

Q. Why? A. So that no two buyers would be there at any one time and so as to avoid any collusion among buyers in bidding on the merchandise, and so that anyone who went in there would not know who was there or who was not there.

2422 Q. Now what next happened? Did Hoffman call off the sale that was scheduled for April 5th? A. I left town the following morning, that is, on March 26th, for the Easter holidays, and I was gone with my family, oh, until late in the evening of April 3rd or 4th, when I returned from the country.

Q. Well, then, you didn't know anything about the proceedings in the meanwhile? A. I had no knowledge of anything that was taking place.

Q. Well, later you knew generally about the bankruptcy petition having been filed, you heard of that? A. I read that I believe in the Times or in the Daily News Record,
2423 on Monday morning.

Q. Well, without going into details, generally you heard about the matter that went along? A. Well, I wouldn't say that.

Q. You heard however from Butler Bros.? A. I would have received notice if they received any. It is customary for them to send them to the party handling their matters.

Q. You knew about the auction, when the sale, a bulk sale, a private sale was discussed, did you not? A. Well, that was at the general meeting on the 25th of March.

Mr. Corbin: Yes, I know that.

2424 Q. But then intervened the bankruptcy and then the sale was stayed, and then later there was talk about a 40 per cent settlement by way of a bulk sale; don't you recall that?

Mr. Walsh: I object to that.

The Court: Sustained.

A. I recall—

The Court: Do not answer the question.

Q. What do you recall after that? A. I recall some

time about April 7th I wrote a letter to Goldman, Malter 2425
& Goldman, asking for the status of the matter. I don't think I got a reply to that letter; but sometime about April 13th, I received a telephone call, I believe from Teddy Goldman, telling me that the petition in bankruptcy had been dismissed and that they were now in a position to go ahead to vacate the assignment, and try to consummate the 40 per cent settlement that had been talked about prior to this, and he sent up to my office a set of papers asking me to mail them out by registered letters to a list which he attached to these papers.

Q. You did that? A. I did that.

Q. You remember, or don't you, about Endicott-Johnson 2426
coming in with their motion? A. I have a slight recollection of that. I took no interest in the matter at all.

Q. The 40 per cent bulk sale? A. That was never consummated. I filed my claim with Mr. Hoffman.

Q. Finally a sale took place? A. I presume it took place.

Q. And your client got a dividend? A. Subsequently, in 1937, they got a dividend of—

Q. $7.50? A. The $7.50 is the minimum that the law allows.

Q. At any time from the beginning of your connection, 2427
with your knowledge of Hymowitz's transaction, did you hear of any proposition or talk of a sale of those assets at a $1900 figure? A. Never.

Q. Or any proposition being talked about by anyone to the effect that one price would be obtained and another, or lower price, distributed to creditors? A. Never.

Q. Or any talk that the true price of the sale would be kept secret from creditors? A. No, sir.

Q. Or any talk about any kickback from the true purchaser? A. No, sir.

Q. Or from the true purchase price, whoever the pur-

2428 chaser might be? A. Never such conversation as far as I know.

Q. Was there ever a conspiracy, so far as you know, or any agreement between you and any of the defendants, or between any of the defendants, these present defendants, to that effect? A. Not that I know of.

Mr. Corbin: Your witness.

The Court: Mr. Walsh, I presume your cross examination will take some time?

Mr. Walsh: I presume it might, your Honor.

The Court: All right. We will take a recess until tomorrow morning at 10 o'clock.

2429

(Adjourned to July 25th, 1940, 10.00 a. m.)

UNITED STATES OF AMERICA

—against—

MORTON GOLDMAN, et al.

New York, July 25, 1940;
10:00 A. M.

TRIAL RESUMED.

2430 SAMUEL IRVING KANDELL, resumed the stand.

Cross examination by Mr. Schachner:

Q. Mr. Kandell, at the time you went up to Mr. Robert Hoffman's office whom did you represent? A. Butler Bros.

Q. And didn't Teddy Goldman go with you? A. I met him in the lobby of Mr. Hoffman's office. He had called me and told me he had an appointment and he asked me if I would go, if I wanted to go along. And I said I would like to go along in order to look at the books and records and prepare the necessary details to give to the creditors at the time of the meeting.

Q. And did you go up together and see Mr. Hoffman? 2431
A. Oh yes, we met in the lobby and we went into his office together.

Q. And who did Mr. Goldman, that is, Theodore Goldman represent at the time? A. Harry Levy.

Q. He represented Harry Levy? A. That is correct.

Q. And you represented Butler Bros.? A. That is correct.

Q. And he did not represent Butler Bros.? A. No, sir.

Q. Is that right? A. Yes, sir.

Q. Mr. Kandell, have you ever been asked questions about this case before by anybody in the United States Attorney's office? A. I was asked questions in reference 2432
to the matter in the latter part of April, 1938, by Mrs. Juskow and Mr. Spector.

Q. Do you remember this question being asked you:

"Q. You went up because Goldman said he had an appointment? A. He made the appointment. I went up with him."

Mr. Corbin: Just a moment. May I have the time and place fixed when this answer or question was supposed to have been put to the witness?

The Court: Yes.

Mr. Schachner: I think the witness fixed it himself, but I would be glad to oblige Mr. Corbin. 2433

Mr. Corbin: Did he fix the time?

Mr. Schachner: It was on April 25, 1938.

Mr. Corbin: Who asked the question?

Mr. Schachner: Mr. Morris Spector asked the question and Mr. Kandell answered it.

Q. Mr. Kandell, do you remember that? A. Will you mind reading that question and answer again? I am sorry.

Q. "Q. You went up because Goldman said he had an appointment?" A. That's correct.

2434 Q. You were asked that? A. Yes.

Q. And you answered, "He made the appointment. I went up with him." Didn't you so answer? A. Well, meaning I went up with him—I met him in the lobby and went into Hoffman's office with him; that is correct.

Q. Yes. I think the jury will understand that.

Now do you remember the next question that was asked you:

"Well, did Goldman represent anybody?"

Do you remember being asked that? A. I wouldn't remember. Will you let me hear the answer? Maybe I can

2435 connect the two thoughts.

Q. "Well, I asked him to represent me at the time, the claims that I had."

Do you remember that answer? A. I may have asked him to act as attorney for the Association in any claims we will have in the matter, yes.

Q. Was that a full and fair answer which you gave at the time? A. I believe it was.

Q. But you didn't mention anything about his representing Harry Levy? A. To whom?

Q. To Mr. Spector. A. No, I don't think I would have mentioned that. I wasn't asked that question.

2436 Q. You were asked whether he represented anybody, were you not? A. I don't think—did the question say, "Does he represent anybody"?

Q. Yes, and that is what the question says. A. Would you mind reading the question again, Mr. Schachner?

Q. "Did Mr. Goldman represent anybody?" And you answered, "Well, I asked him to represent me at the time the claims that I had." And the next question was, "You asked Goldman to represent you?" And your answer was, "Yes, sir."

Do you remember that? A. That's right; yes. But there is nothing in there that would ask me who Goldman

represented or ask me who I know Goldman represented. 2437
There was no direct question of that type. I wasn't asked who Goldman represents.

Q. Isn't it true that at that time you had no idea that Goldman represented Harry Levy? A. That is not true, because when I spoke to him the evening before he had given me the details and said he had gotten it at the request of a creditor of his, so I couldn't have made a statement to that effect.

Q. When you were up there, when you met in the lobby—did you meet in the lobby by appointment? A. I told you that I met him downstairs in the lobby; that's correct.

Q. Had you asked him to draw up a retainer in which 2438
you were to be retained as co-assignee? A. I don't believe I did.

Q. That was his own idea; not yours? A. It probably was.

Q. Tell me, you produced a paper here the other day—A. The exhibit as to the hours?

Q. Yes. It is Defendants' Exhibit F? A. Yes.

Q. Didn't you? A. Yes, sir. I didn't produce it. Mr. Corbin produced it.

Q. Do you know from whom Mr. Corbin got it? A. I believe it came out of the file that I produced, or gave it 2439
to Mr. Mintzer at the time I retained him.

Q. You say you gave Mr. Mintzer a file; is that right? A. I gave him some papers that I had in connection with this Hymowitz case; that is correct.

Q. Was that the file in connection with the Hymowitz case? A. It was papers in connection with the Hymowitz case, that's correct.

Q. You wouldn't call that a file? A. Well, you might call it a file, you might call it an envelope. I don't remember in just what form it was.

Q. How many papers did you give Mr. Mintzer?. A. Oh, there were quite a number of papers in there.

2440 Q. Can you tell us approximately whether there were 25 papers? A. I wouldn't be able to guess at it but there was quite a number, Mr. Schachner.

Q. Were there more than 10 papers? A. I believe so.

Q. Definitely more than 10? A. I believe so, yes, sir.

Q. Were there as many as 20 papers there? A. There may have been. I wouldn't dare guess because I believe in that file it contained the copies of the mimeographed papers that went out, the surplus papers, so there may have been a lot and there may have been a few; I don't know.

Q. But certainly more than 10? A. I believe so.

Q. Do you remember having been asked by the U. S.
2441 Attorney's office whether you had a file in that case? A. I may have been asked that question.

Q. And do you remember what you answered? A. I wouldn't remember now, Mr. Schachner.

Q. Well, let me read to you something and see whether I can refresh your recollection.

Mr. Corbin: Is this something signed by the witness?

Mr. Schachner: I am refreshing the witness's recollection.

Mr. Corbin: My point is—

2442 The Court: Do you object?

Mr. Corbin: I would like to have it marked for identification, and the right to look at it.

The Court: Do you object to the question as propounded?

Mr. Corbin: No.

The Court: Very well, gentlemen. In order to impeach a witness, you ought to know the way to do it is to ask him if on such and such a former occasion, at such a place and such a time he did not answer the following questions. So if you object

to it I will sustain the objection. If you don't, you may proceed with the question, Mr. Schachner. 244

Mr. Corbin: Well, all right; go ahead.

Q. Were you asked this question, Mr. Kandell—Mr. Spector speaking:

"I got your file and there's only these three letters, letters marked Exhibit A, Exhibit B and Exhibit C. Will you identify those as letters coming from your file?"

Were you asked that question? A. I may have been asked that question.

Q. And did you answer it: "These are articles that our office clipped out of the Daily News Record." A. I presume that's correct. 244

Q. Were you asked to initial those? A. I wouldn't remember that. If they contain my initials I would be glad to identify them.

Q. Were you asked this question: "This file is destroyed." Do you remember that? A. What is that, an answer or a question?

Q. That is a question. A. By whom?

Q. Mr. Spector. A. Is that the entire question?

Q. That is the entire question. A. Would you mind reading the prior question so I can connect the thought there and know what it was about? 244

Q. Gladly. The prior question is:

"How did you know you represented creditors?" A. I got a call from the creditors.

Q. Well, that was the question. A. Yes; and then followed up by what question?

Q. Do you remember that question? A. Well, I probably was asked that question—what was the answer to it?

The Court: Mr. Kandell, let him finish his question first so that he can propound it to you.

2446 The Witness: I am sorry.

The Court: Proceed with the question, Mr. Schachner, that you were asking him.

Q. Now do you remember being asked that question? A. Would you mind repeating that question?

Q. The question is, "How did you know you represented creditors?" A. I may have been asked that question.

Q. And do you remember this answer: "I explained that to you this morning. I looked up the credit files. The files are destroyed after the bankruptcy." A. I may have answered that, yes.

2447 Q. All right. And then do you remember the next question:

"This file is destroyed?" A. I may have been asked that.

Q. And do you remember the next answer: "Those are the only papers left, clippings put in subsequently. At times those newspaper clippings run 30 to 60 days behind." A. I may have answered along those lines, because that is the custom.

Q. And was it true at the time? A. It was.

Mr. Schachner: Will you please mark this for identification.

2448

(Marked Government's Exhibit 26 for identification.)

Q. This is the complete file that you furnished the U. S. Attorney's office? A. May I look at it?

Q. Sure (handing witness). A. It probably is.

Mr. Corbin: May I have the last few questions 2449
and answers read?

(Record read.)

Mr. Corbin: Thank you.

Q. You just answered that you furnished the file containing more than ten papers to Mr. Mintzer? A. I did.

Q. That will be all on this topic. Now you testified yesterday on direct examination by Mr. Corbin, I believe, that certain papers were sent over to you from Goldman's office. Did you mean Martin Goldman or Teddy Goldman? A. The office of Goldman, Malter & Goldman.

Q. But they sent you certain papers. What papers were 2450
those? A. There was an envelope containing a draft of a letter to be sent to creditors, a copy of a notice or request to vacate the assignment and a draft of a Bulk Sale notice and a list of creditors in the matter of Hymowitz.

Q. I show you Government's Exhibit 15 in evidence and ask you whether the drafts were drafts of these letters here (handing)? A. I believe this is the letter. This is a copy of the Bulk Sales notice, except that this notice has the name of the purchaser and their notice had no name of a purchaser, and this—I don't know just what legal document it is, but it is a request to vacate the assignment, I believe, vacating and dismissing the general 2451
assignment, and there isn't a list of creditors attached. In addition to that I received a list of verified creditors, I believe.

Q. You say the papers they sent over to you contained no listing of a purchaser on that? A. That is correct.

Q. Well, did they tell you how to fill in that blank? A. No. When I received those papers it was rather late in the afternoon, and I believe in those papers they had set a date of consummation of this bulk sale, and I believe according to law it has to be at least 10 days' notice to each and every creditor. They wanted the notices out

2452 that day in order to comply with the subsequent consummation date, and I notice there was no name of a purchaser on the Bulk Sales notice, and I called the office of Goldman, Malter & Goldman and I spoke to Theodore Goldman.

Q. Well, what did Theodore Goldman say to you? A. Well, I said to him—I called his attention to the fact that there was no name of a purchaser on there, and I asked him who the purchaser was, and he says from his understanding it's a Mr. Abramson.

I said, "Well, I'm going to call him and ask him whether or not he wants the goods bought in his name." And I called Mr. Abramson's office and he wasn't in. I
2453 called Mr. Theodore Goldman back and I said, "Mr. Abramson is not in, and if you want these out tonight you must get the name of a purchaser."

He said, "I don't know just what you could do." So I says to him, "My brother-in-law is in the office. If he won't object to the use of his name I will ask him, and if he will allow the use of his name with the understanding that upon the confirmation of the sale he is to re-transfer any rights he has under that bill of sale to the proper purchaser, whether that will be satisfactory?"

And Mr. Theodore Goldman says, "Well, you tell him the facts and if it is agreeable to him you can use him
2454 name as a dummy purchaser until the sale is consummated." And I turned to my brother-in-law who had been in the office at the time and I told him the details that I explained to you, and he said, "Well, that's agreeable; I have no objection." And I used my brother-in-law's name as the buyer.

Q. Were you asked by Mr. Spector this question: "Q. Do you know a Mr. Rothlein that is in the drygoods business that buys up all these jobs?" Do you remember that? A. I may have been asked that question; I don't remember.

Q. Do you remember whether or not you answered "No, sir"? A. I doubt if I would have answered that way, Mr. Schachner, if the name "Rothlein" was mentioned. I certainly would have recognized it. 2455

Q. You are sure, then, that you didn't answer that way? A. Well, I may have answered that there is no—that I don't know a Rothlein who buys up stocks of merchandise. I don't know of any Rothlein that buys up stocks of merchandise, because my brother-in-law is not a buyer of stocks of merchandise.

Q. The next question: "Sure about that?" and your answer, "Positive"? A. I may have answered along those lines at the time, with that in mind. 2456

Q. Did you try to fool the U. S. Attorney's office at that time? A. No, sir. If you knew the conditions under which I was laboring at that time you wouldn't think so either.

Mr. Schachner: That is all.

Redirect examination by Mr. Corbin:

Q. Mr. Kandell, may I ask what were the conditions under which you were laboring, as you say, at that time? A. If the date April 25th is correct I don't remember; but I know on the morning, in the latter part of April, 2457 at about 9:30 in the morning two men walked into the office of the Dry Goods and Furnishings Association and asked for Mr. Kandell and they asked for Mr. Cohen, and I walked over to them and I told them that I was Mr. Kandell, and I showed them Mr. Cohen, and they said, "Come on downtown."

I said, "What do you mean, Come on downtown?"

"You are wanted downtown in the D. A.'s office."

I asked them, "With reference to what?"

"We can't tell you."

I asked them for their credentials and they showed me

2458 their credentials. I asked them, "May I call up an attorney to find out what this is all about, or whether I should go with you? I don't know who you are."

"No, you are not allowed to call an attorney."

I then talked to Mr. Cohen. I says, "Well, what are we going to do?"

He says, "Well, we will have to go down with them if they don't let us call an attorney, or don't let us do anything, we will have to go downtown today."

Mr. Cohen continued for a few minutes to dictate his mail and I did not do anything, because I was so bewildered by the entire thing—it came out of a clear sky,
2459 without any warning or anything. I waited until he finished his mail, and then they accompanied us in their automobile and brought us down into this building, I believe it was, through some back entrance in a basement and they took us up—I believe it was to the sixth floor and they turned us over to Mr. Juskow.

Q. Is that the gentleman at the table here now (indicating)? A. Yes, sir.

Q. The F. B. I. man? A. That is correct. I believe so.

Q. By the way, until that occasion in April, 1938, had you heard anything about the Hymowitz matter since the year before?

2460

Mr. Schachner: I object to the question.

The Court: I will overrule the objection.

A. What do you mean, heard about it? In what way?

Q. Had you heard of any inquiry being made in respect of anything in connection with the Hymowitz matter? A. No, sir.

Q. In other words, did this visit of these two men, that they paid to you on that day, come out of the blue as far as you were concerned? A. As far as I am concerned it came out of a clear sky and just bewildered me

Q. All right. You got down here on the 6th floor with Mr. Juskow, and then what? A. Well, we were separated. Mr. Cohen was put at one side and I was put at the other side; and we still weren't told what it was all about and we were just sitting there in suspense. 2461

Mr. Walsh: I object to that, if your Honor please, as immaterial and irrelevant.

The Court: I will overrule the objection.

Q. Were you arrested? A. I don't know what I was, Mr. Corbin. I didn't find out until the end of the day. We were sitting there.

Q. What time was it that you got down here? Was it in the morning or the afternoon? A. I should imagine it was before 10 o'clock in the morning. 2462

Q. In the morning. All right. What then happened? A. Well, we sat around there for the longest period of time without anything being said or asked of us. We were separated, and then I saw some people come into the room whom I recognized. I believe a Mr. Schwartz was brought in. I think he was the only one that I recognized in there, and he was sitting in an altogether different section of the room, and subsequently Mr. Juskow called me over, and I believe he took down my personal life's history, and then fingerprinted me, and I still didn't know what it was all about, and at that particular time my wife was quite ill, and I asked for permission to call her, to find her condition, and for the longest while he said: "You can't make any telephone calls," until I finally prevailed upon him to make a call, and then in the afternoon, I believe it was, we were taken down to Mr. Spector after they supplied us with a lunch. We were taken down to Mr. Spector and there I was questioned in his office. Mr. Juskow was present. 2463

2464 Q. Well, when you left uptown and you were brought down here to this building, did these men ask you to—

Mr. Walsh: I object to that as irrelevant, if your Honor please.

The Court: Yes; I will sustain the objection.

Mr. Corbin: May I finish the question, Judge?

The Court: Well, that was sufficient for it to be determined as a leading question.

Mr. Corbin: This is a subject that was brought out on cross-examination.

The Court: No, I did not sustain it on that
2465 ground, Mr. Corbin, but upon the ground that you are leading the witness. You can ask him about any particular thing, and then ask him what happened.

Q. You had some conversation with the men uptown before you ~~came downtown~~, didn't you? A. What I related to this audience a little while ago.

Mr. Corbin: I don't know how to ask it any differently, Judge. I will have to use this inquiry to the witness:

2466 Q. Did they ask you at the time to bring along the file of the Hymowitz case? A. The men that came to the office?

Q. Yes. A. No, sir.

The Court: I will tell you how you could have asked that without being leading; you could have asked: "What was said, if anything, about the Hymowitz file?", without being leading.

Mr. Corbin: It is the same thing. All right. I will get it right, then.

Q. In the conversation that you had uptown before these

two men asked you to accompany them downtown, and while they were in your office, what was said with reference to the file in the Hymowitz case? A. Nothing. 2467

Q. And at that time did they say or did they not ask you to bring any papers of any kind in respect to the Hymowitz case? A. No, sir.

Q. Was the Hymowitz case mentioned at all? A. No, sir.

Mr. Corbin: May I see the paper from which counsel read those questions and answers to the witness?

Mr. Schachner: Your Honor, I object to that.

The Court: I will sustain the objection.

Mr. Corbin: Well, I ask that that paper be marked for identification that counsel read from. 2468

Mr. Schachner: I object to that.

The Court: I will deny the request.

Mr. Corbin: Judge, they read here in open court—

The Court: Mr. Corbin, until they offer it, and unless they offer it, the only way to impeach a witness is to ask him if on a certain occasion and at a certain time he did not testify differently to what he says now. If he says "Yes" that ends the whole thing. If he says "No" then the opposite side can introduce that or introduce witnesses to contradict it, but that paper is not competent unless it is proven by some witness that he testified differently on that occasion. 2469

Mr. Corbin: I am not claiming that it is competent; I am claiming the right to inspect it.

The Court: Well, I will rule that you are not entitled to inspect it, and I will give you an exception.

Mr. Corbin: Even if it were the grand jury minutes, as in the Socony-Vacuum case.

The Court: You can state the ground of your

2470 objection for the record, but I will adhere to my ruling.

Mr. Corbin: I think the record is clear now that counsel read from a paper certain questions and purported answers. It is that paper which I ask leave to look at and which I have asked to be marked for identification; and I claim as a matter of right, and I ask also separately as a matter of discretion, the opportunity to look at that paper in order to determine whether or not in the questions and answers, and in the contents of the paper there are other questions, and answers, the con-
2471 text of which bears upon the questions and answers read to the witness?

The Court: I deny the request, and hold that if you want to ask this witness any questions on the stand in explanation of anything that was brought out by the cross examination you may do so, but that you are not entitled to the custody of the paper or to have it marked for identification.

Mr. Corbin: And I respectfully except.

Q. Were you furnished with a copy of the questions and answers that were put to you down there that day?
2472 A. No. I was asked for it and was told that I wasn't entitled to a copy.

Q. That is confidential government stuff? A. I don't know what they said to me, but they said I wasn't entitled to a copy.

Mr. Walsh: I object to the characterization, if your Honor please.

The Court: I will overrule the objection.

Mr. Walsh: That it is the stuff of the government. It is not?

The Court: I will overrule the objection.

The Witness: I won't say they said that, but 2473
they told me I wasn't entitled to a copy.

Q. Whether what you said on that occasion was recorded accurately you don't know, do you? A. I wouldn't know, no, sir. I never saw it.

Q. You had no counsel present when these questions were being asked of you? A. I was told I wasn't entitled to counsel.

Q. And did you sign the paper? A. I don't remember signing it.

Q. Did you ever sign—was the paper or any paper ever presented to you for signature or presented to you 2474
for reading at any time? A. I don't remember that.

Q. You don't recall ever having had it presented to you to go over and correct even? A. I don't recall that.

Q. Well now, on that occasion and as a part of the circumstances that you referred to on cross examination, were you shown a paper of which this is a copy, which I show you (handing)? A. No, sir. I was never shown this paper.

Q. You say you were fingerprinted that day? A. By Mr. Juskow.

Q. At the time that you were fingerprinted did you know what you were there for? A. No, sir. 2475

Q. And then later there was a talk about a bond, a bail bond, was there not? A. That was at the end of the questioning and so forth that took place during the day. That must have been around 3.15 or so in the afternoon.

Q. And at that time you realized that you were under arrest, didn't you? A. Well, I would presume that I was under arrest if they asked for a bail.

Q. And the bail was fixed at how much? A. I was brought down into the basement of this building. I believe, before—they said they were going to take me before a Commissioner, and I believe the bail was $500.

2476 Q. At that time Mr. Juskow made a complaint upon which you were held, is that right? A. Well, I subsequently learned that.

Mr. Walsh: If your Honor pleases, I object to "at that time". If he will specify the date, if that is the complaint, I would like the date in the record right now rather than "some time". It is too indefinite.

The Court: I will let you bring it out on recross if it is not brought out. I will overrule the objection.

2477 Mr. Corbin: The arraignment and the bail was fixed, according to this copy, on April 25, 1938.

Mr. Walsh: Was there a warrant attached to that, sir?

When was the warrant issued?

Mr. Corbin: Just a complaint.

Mr. Walsh: What is that paper in the back?

Mr. Corbin: That is a commitment. Do you have the file here?

Mr. Walsh: Which one?

Mr. Corbin: The file in this present case.

Mr. Walsh: What do you want, Mr. Corbin?

2478 Mr. Corbin: I want the original of the commitment of the witness on that day.

Mr. Walsh: If it is a court record—

Mr. Corbin: And the complaint made by Mr. Juskow on which he was held,

Mr. Walsh: If your Honor pleases, if Mr. Corbin will say that this is a copy, and that this is a copy of the commitment, that is a court record here and I have no objection if he uses this until such time as we get the other.

The Court: Very well.

Mr. Corbin: I offer this in evidence.

(Marked Defendants' Exhibit G.) 2479

Mr. Corbin: (To the jury): Ladies and gentlemen, this commitment—

Mr. Walsh: If your Honor please, is this proper? This is no defendant at the present time, and I object to it as immaterial and irrelevant at this time regardless of the complaint. That has no relevance to the matter of the innocence or guilt of the defendants now on trial, and I think it is just wasting time.

The Court: I will overrule the objection. It goes to the circumstances under which these statements were made before the F. B. I. agent. I think that is proper. I will overrule the objection. 2480

Mr. Corbin: Ladies and gentlemen, this paper is the commitment of Samuel Kandell made by Mr. Cotter, United States Commissioner, dated 4/25/38, a certificate that he having been given bail that he be released from custody, bail having been fixed at $500; and attached to it a paper by Mr. Juskow, together with the record of the proceeding, and endorsed on the back, on a separate page, by the United States Marshal.

For the moment let me call your attention to the fact that Mr. Juskow swears that— 2481

Mr. Walsh: If your Honor please, if he wants to read the exhibit let him rather than explain and call anything to their attention, to this part or that part. I think that is the proper procedure.

The Court: I think if he wants to call attention to a particular part, he may. I will overrule the objection.

Mr Walsh: Yes, without comment. I have no objection, but without comment.

The Court: Yes, without comment. But if he

2482 wants to call attention to such and such a part, I will allow him to do that.

Mr. Walsh: I don't object to that. I merely object to the side comments.

The Court: Very well, Mr. Corbin, read the whole paper and then in your argument to the jury you may read that part which you desire.

Mr. Corbin: Mr. Juskow swears—(reading to the jury).

And then the notations indicate that separate warrants to apprehend were issued against Samuel Kandell, Phillip Cohen, Aaron Kreiselman, Sam
2483 Ribach, and Abraham Schwartz; and the notation that Kandell waives examination and will await action of the grand jury; bail, $500, dated, New York, April 25, 1938, and it is signed by Mr. Cotter, Commissioner. With reference to Cohen, dismissed on motion of Spector—that was the district attorney—and then the notation says—(reading to jury).

Q. So you were held to await the action of the grand jury in April, 1938?

2484 The Court: I sustain the objection for the reason that it has already been shown.

Q. Did you hear anything more about that matter until this present year 1940?

Mr. Walsh: I object to that, if your Honor please.

The Court: I will overrule the objection.

A. I was some time after that date, I believe, or it may have been within a period of 30 days or so, called into Mr. Spector's office again, and at that time he gave me a

lecture on behavior and he told me that he was going to 2485
appear again before the—

Mr. Walsh: I object to that as incompetent

The Court: Yes. I sustain the objection.

Mr. Walsh: Let us get on to something important.

Mr. Corbin: What.

Mr. Walsh: Your Honor, I would like to get on to something important.

The Court: Very well. I will sustain the objection. Proceed, Mr. Corbin.

Q. And you were discharged, were you not, from that bail? 2486
A. I subsequently was discharged, yes, sir.

Q. And did you hear anything more from the Hymowitz matter, or anything connected with it, from any official source until January or February, 1940, two years later? A. No; at which time I noticed that an indictment had been handed down.

Mr. Walsh: If your Honor please, I object to that as not responsive and ask that it be stricken.

The Court: I will overrule the motion.

Q. You did not hear anything about any indictment from the first grand jury, did you? 2487

The Court: I will sustain the objection.

We will finish with this witness before I recess. You may proceed.

Q. Now, you were read certain questions and answers from a paper that I cannot read to you from now, but I took a few pencilled notes, and from them I call your attention to something contained in the paper as read, to the effect that you said that you had produced the file of the Hymowitz case from your office. Was something like

2488 that said to you by Spector? A. Well, I didn't produce—if I remember correctly, Mr. Spector asked me to call my office and at first he asked me whether Mr. Cohen could go up to bring down the file, and I said "Yes." "Well," he said, "I might facilitate that if you have anybody in the office that could bring that down." I said I would have to call the young lady up and ask her to bring it down some time, "whenever you want it." And he said that is all right, and I called the young lady and asked her to bring the file down, that's correct.

Q. And what was marked here for identification is what she brought down, is that right? A. If I remember correctly,
2489 those three sheets of paper were brought down by her.

Q. Well, did you say that these three papers were the only papers that you had in your possession or in your office with reference to the Hymowitz matter in any connection? A. Well, I would have to explain that, Mr. Corbin. Those were the only papers that were in the credit file. You see, we have a credit file in which we keep a record of retailers and their behavior for which we render reports or opinions to creditors or subscribers, and in addition to that we have a file wherein we keep—matters, that is items referred to us for collection against debtors, and that was all she picked out of the credit file and brought down with her.

2490 Q. Well, did you talk with her in their presence? A. From Mr. Spector's office, yes.

Q. Did you tell her "Don't bring anything except some newspaper clippings"; or anything to that effect? A. Oh, no, sir. I asked her to bring the file down in the Hymowitz matter.

Q. And you had no other previous communication with her? A. Oh no.

Q. So that pursuant to the telephone call made in the presence of the district attorney, his office there, the girl brought this down to court? A. That's correct.

Q. Now what I want to find out is this: Did you tell— 2491
had you seen the file at any time from the year before when the matter was on? A. The last time I probably saw that file, that is the collection file I am referring to now—

Q. Yes. A. —was in December, I believe, when the matter was terminated—that is, the assignment proceedings—and I probably put it amongst the closed files after it was terminated, which is customary.

Q. What I am trying to find out is whether you represented to the district attorney that these three newspaper clippings were all the papers that you had or that were in your office in connection with—in any way with the Hymowitz matter? A. I don't think that would have been my 2492
intentional answer, Mr. Corbin.

Q. Well, of course I can't see the paper so I cannot tell what else is in there, but do you or do you not recall the entire conversation that you had with those men in the office there, in the building here? A. Oh, I wouldn't dare to recall it, because the condition I was in—I wouldn't try it.

Q. Whether that paper would refresh your recollection as to what you may have said or may not have said—what you may have been asked about or may not have been asked about, you cannot tell without looking? A. I wouldn't say without looking at it, no, sir. 2493

Mr. Corbin: I make a request now, Judge—

The Court: It isn't necessary to make another request. I have already ruled, and I adhere to my ruling.

Mr. Corbin: For the purpose of refreshing the witness's recollection.

The Court: I adhere to my ruling. Proceed with the examination.

Mr. Corbin: Exception.

Q. Now, this sole subject arose over this Exhibit F, which

2494 I show you again (handing). You remember I asked you to look at it on direct examination, don't you? A. Yes, sir.

Q. That was not among the papers that the girl brought down from the office when you telephoned her the day of your arrest, was it? A. No, sir.

Q. Well, what do you say now? Did you write that out afterward, make evidence in this case? A. No, sir. This is the minutes of the meeting originally conducted in my office on March 25, 1937.

Q. Is it or is it not the fact that wherever it was, on the day of your arrest, a couple of years ago, what is the fact as to whether or not it is and was then and still is the
2495 original memorandum that you made on the 25th day of March, 1937? A. There is no question but what it is the original.

Q. Was Mr. Cohen present at that meeting on March 25th? A. No, sir, other than the fact that he may have come in and out of the room, to deliver telephone messages or ask me any questions. He did not partake in the meeting.

Q. Yes, but was he in and around that office that day? A. Oh yes, he was in the office on March 25th, surely.

Q. And how does it happen that there is some of that
2496 paper in his handwriting? A. I will have to explain to you again that the following day, that is March 26th, I was leaving with my family for the Easter vacation.

Q. You told us that. A. And I left this with Mr. Cohen and I told him that these are the appointed hours at which the various creditors were going to take a look at the stock, that he should please, on Monday morning—

The Court: That has been gone into yesterday. Can't we shorten this just a little bit.

Mr. Corbin: They put all this stuff in, Judge, to contradict that this is a bona fide paper.

Mr. Walsh: We never claimed that this wasn't a

bona fide paper, if your Honor please. Our contention was that we asked him to produce the file and he produced three newspaper clippings, and then this shows up at the trial for the first time. That is our contention. 2497

The Court: Very well. Let us save time.

Q. Is this a bona fide paper that was prepared at the time, or was this something trumped up later? A. This is unquestionably the original paper of March 25, 1937, made by me and later, subsequently additional writings were put in by Mr. Cohen.

Q. And whether or not the girl brought it down there that day, that still remains the fact; is that true? A. Yes, sir. 2498

Mr. Corbin: That is all.

Mr. Walsh: Four questions, if your Honor pleases.

Recross examination by Mr. Walsh:

Q. When your girl brought you the file down did you tell Mr. Spector that was the whole file after you looked it over?

Mr. Corbin: I object.

The Court: I will overrule the objection.

Mr. Corbin: Exception. 2499

Q. Did you? A. I may have said that was the file.

Q. You may have? A. Yes, sir.

Q. And you were very excited that day? A. That's correct.

Q. Did you know that a warrant had been out for your arrest two days before you were arrested? A. No, sir.

Q. You don't deny it, though, do you? A. How could I deny it when I don't know it?

Mr. Walsh: What is that last exhibit that you had there?

(Handed to Mr. Walsh by Mr. Corbin.)

2500 Mr. Walsh: Will you concede that Defendant's Exhibit G, the warrant was issued on the 23rd day of April, 1938?

Mr. Corbin: I don't need to concede anything that is there. I notice—

Mr. Walsh: Well, just to save time, Mr. Corbin.

Mr. Corbin: I notice the complaint is verified on the 23rd—Juskow's complaint.

Mr. Walsh: That is correct.

Mr. Corbin: Does it say that the warrant was issued on the same day?

Mr. Walsh: The same day.

2501 Mr. Corbin: That doesn't mean that he knew about it. What difference does it make?

Q. Well, when you were arrested they exhibited to you a warrant for your arrest and told you they had the warrant with them, didn't they? A. No, sir.

Q. You are absolutely sure of that? A. Positive. I asked them what it was all about and they said, "You are wanted downtown."

Q. And so then you were brought before Mr. Spector? A. Originally before Mr. Juskow.

Q. Well, after Mr. Juskow then you were brought down
2502 to see Mr. Spector, is that right? A. With Mr. Juskow, yes.

Q. And before he asked you any questions he warned you of your constitutional rights, that you needn't make any answers, didn't he? A. He told me I didn't need to answer if I feel I don't want to.

Q. There is no question of that? A. No; that is correct.

Q. Were you so bewildered and so excited on that day that you did not even know the name of your brother-in-law? A. I don't know what I could have done on that occasion—

Mr. Walsh: That is all.

A. (Continued) Mr. Walsh, it was the first time in my

life I was ever apprehended in any matter whatsoever. 2503

Q. And what time were you apprehended? A. At about 9.30 or 10 in the morning.

Q. And what time were you questioned? A. Oh, I should imagine it was after lunch, the first time.

Q. Didn't you say on direct about 3.15? A. I said we ended about 3.15.

Q. Well, you were questioned about— A. Up until about 3.15, yes, through the afternoon.

Q. So from 9 o'clock until 3.15 in the afternoon you continued to be so excited you did not know what you were saying? A. Well, anybody in the condition that I was, sitting in a room without knowing what it is all about, without being told, being fingerprinted and a life history given, would have gotten excited at any occasion. 2504

Q. Didn't you just tell the jury that Mr. Cohen was telling the telephone conversations that had been related to your office—relayed to your office? A. Oh, that was at the meeting. He walked in and out of the room. That was that question.

Q. Well, was he up at the office that day? A. At what office?

Q. The U. S. Attorney's office, Mr. Spector's office. A. He was brought down with me.

Q. Was he excited, too? A. I couldn't see. We sat at the other end of the room. We weren't even allowed to discuss anything together. 2505

Q. But you were so excited you did not even know the name of your own brother-in-law? A. I may not have recalled the question or the meaning of the question.

Mr. Walsh: O. K.

The Court: Is there anything further?

Mr. Walsh: No.

The Court: Anything further, Mr. Corbin?

Mr. Corbin: No, your Honor.

2506 The Court: Very well. You may be excused.

(Witness excused.)

The Court: I will recess this case for 20 minutes. Come back at 11.20.

(Short recess.)

MARTIN M. GOLDMAN, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Corbin:

Q. Mr. Goldman, you are a lawyer? A. Yes, sir.

2507 Q. Practicing where? A. New York County, 302 Broadway.

Q. And living where? A. 765 Eastern Parkway, Brooklyn.

Q. With your wife and family? A. Yes, sir.

Q. Consisting of what members? A. I have a boy that is 21 years of age and another boy 16.

Q. And your wife is here? A. Yes, sir.

Q. And your boys are in college? A. One in college, one in high school. They are now up-state.

Q. I would like to introduce you to his Honor and the jury in this additional respect: Are you a member of any Bar Association, and if so, what? A. Yes, sir.

2508 Q. What? A. Brooklyn Bar Association, New York County Lawyers, New York State Bar Association, American Bar Association, a lawyers' club over in Brooklyn and the Commercial Law League of America—I think that is considered a lawyers' group.

Q. And are you serving or have you served on any committees, and if so, what? A. Corporate Reorganization of the Brooklyn Bar Association. I am a member of the Bankruptcy Committee. I am a member of the board of directors of the Lawyers' Club of Brooklyn. I might add another group of lawyers, the National Bankruptcy Conference, of which I am an advisory member.

Q. Is that the Conference that formulated Federal legis- 2509
lation? A. Yes, sir, that was a conference that brought about the Hastings-Hatch Bill, and ultimately resulted in what is known as the Chandler Act.

Q. Mr. Goldman, you have heard the name of your firm mentioned here as Goldman, Malter & Goldman? A. Yes, sir.

Q. What is the general nature of the business conducted by that firm? A. Well, I would say that we have a general and varying practice. We have, I should judge, every type of matter that you could possibly imagine, has been handled in our office with the exception probably of patent litigation and admiralty. 2510

Q. And you have had some bankruptcy work? A. Oh, yes, sir, a considerable amount.

Q. Are you ashamed of the fact that you handle bankruptcy matters?

Mr. Walsh: I object to the form of the question.

The Court: I will overrule the objection.

A. I would not be as active as I am in the various Bar Association groups if I were.

Mr. Walsh: That is objected to, your Honor.

The Court: Motion sustained. 2511

The Witness: I say I am not.

Q. Can you give us an idea of what percentage of your practice is in that line? A. Well, I tabulated some figures for Mr. Schachner when I appeared before the last grand jury and gave him a list of the insolvency cases.

Mr. Walsh: I object to that and ask that it be stricken out as not responsive.

The Court: Well, it is not as responsive as it might be but I will let it stand and overrule your objection.

2512 The Witness: Out of 1600 cases in a period of years, from 1937 to 1939, inclusive, there were about 90 cases of court proceedings consisting of about—this may be one or two up or down—that I gave Mr. Schachner. About 20 cases in which we were attorneys for creditors and filed involuntary petitions in bankruptcy. We were attorneys either for a receiver or a trustee or some member of the firm acted as a trustee, but I say 20, approximately 20, where we filed involuntary petitions in bankruptcy. This is in the period where we appeared—I said that first. We were appearing as attorney for the receiver or
2513 trustee or some member of the firm acted as trustee, and was elected by the creditors. About ten cases in which we appeared as attorney for bankrupts and about ten cases in which we appeared in corporate reorganizations under 77B or Chapter 11 or Chapter 10, which was formerly 77B.

Q. And what is the balance of the insolvency matters? A. Then there were assignments, about 28 or 30, assignments for the benefit of creditors in which either we were attorneys for the assignee or some member of the firm acted as assignee. I think that accounts for 90 cases.

2514 Mr. Corbin: I think so.

Mr. Walsh: 70.

The Witness: I beg your pardon.

Mr. Corbin: Mr. Walsh apparently has a pencil memorandum of the figures.

The Witness: I have a memorandum in my pocket. I think this will help me better. That accounts for 90. Well, 20 involuntary petitions, 20 appearing as attorney for the receiver, 10 as attorney for the bankrupt, 10 for reorganization proceedings, that is 60. And about 30 cases of assignments.

Mr. Walsh: I beg your pardon. I didn't have the 20 cases that you acted in as attorney for the receiver or trustee. 2515

Q. These are actual proceedings? A. Yes, sir, in the files in the office during that three-year period.

Q. So the percentage is what? A. About 6 per cent, and maybe slightly less.

Q. You handle all types of work I think you have already indicated? A. Yes, sir.

Q. Have you been appointed by judges around here and in Brooklyn in proceedings? A. I have.

Q. Surrogates' Court? 2516

Mr. Walsh: I object to this.

The Witness: You don't have to lead me.

The Court: I will overrule the objection to that. He is entitled to go into it at reasonable length.

A. I have been appointed by a surrogate in this county, by Supreme Court judges in this county. I have been appointed by Supreme Court judges in Kings County.

Q. As what? A. I was appointed by the Surrogates' Court as special guardian in accounting proceedings.

Q. Substantial matters or in little matters? A. In one case I received a fee of $3500 and a lawyer knows that is a substantial appointment. As referee by a Supreme Court judge and I was appointed by the Surrogate where the fee ran to $3000. 2517

Q. Judge Foley? A. That is correct.

Q. You served as special referee and guardian by appointment of various judges in various courts? A. As late as ten days or two weeks ago I was appointed by the Supreme Court in Brooklyn and that appeared on the front page of the Law Journal.

Q. What we want to know is in general, just give us in

2518 round figures the gross of your practice, say, during the years 1936, 1937 and 1938. A. I tabulated those figures for Mr. Schachner too. I think the approximate figures are around—I think our average gross fees, subsequent to 1936 ran about 30,000 or $40,000. And I think in 1936 they ran close to $50,000. The expenses in the office ran from half to a third of the total gross of the income.

Q. What kind of personnel did you have? A. In what year?

Q. 1937. A. Well, I think we had about four or five stenographers. We had three law clerks, a managing attorney or managing clerk, depending upon the particular
2519 type. I think we had one or two lawyers working for us in addition to the members of the firm. If my memory serves me well, I think we ran from 13 to 15, including the members of the firm. That was not consistent. That depended upon the bulge of activity on particular matters, and the seasons of the year.

Q. Your office personnel varied, did it? A. Yes, sir.

Q. There was one witness here by the name of Harry Levy. Do you recall him? A. Yes, sir.

Q. Has he been a client of yours for some years? A. He has been a client of the office for quite a number of years.

Q. For some years prior to 1937 who attended to collec-
2520 tions and other matters that Mr. Levy had? A. My brother, Teddy.

Q. Did you ever talk with your brother Teddy with reference to Mr. Cohen at some time in 1937? A. Mr. Cohen?

Q. Mr. Levy, rather. A. I talked to my brother about Harry Levy in connection with this case.

Q. When was that? A. The first time I talked to him was on the evening of March 24 of 1937.

Q. And what was the talk? A. He had told me that Levy had called him in connection with a matter, giving me the name of the matter, the address, the location, and giving

me some details of which I made a pencil notation. I might have committed it to memory, in which he told me the assets and liabilities— 2521

The Court: Will you talk louder, please.

A. In which he told me the assets and liabilities, the facts surrounding the case, the fact that there was an assignment made, that there was no meeting of creditors heretofore held, that the client was quite disturbed about the fact—it appears that the assignee and the assignee's attorney were non-representative of creditors and were representatives of the debtor, and where the case was in the debtor's control. 2522
And he also told me that Harry Levy had pointed out to him that the New York Men's Credit Association, of which he was a member, would not tolerate that, that he didn't want to permit that thing to go on, that he knew its attitude about assignments from years of contact, and he asked me whether I would go to a meeting of creditors in the case that was to take place on the following day, I think about 4 or 4:30. He said he was not able to take care of the matter, and asked me to cover it for him, which I said I would.

Q. That is because he had some other appointment? A. That is right. 2523

Q. And you agreed to attend the meeting? A. Yes, sir.

Q. And he gave you generally the facts that you have indicated? A. Yes, sir.

Q. Did you go to the meeting on the afternoon of March 25? A. I did.

Q. Tell his Honor and the jury as briefly as possible what occurred there. A. The meeting was a little delayed, as usual, waiting for people to come in, and I suppose I ought to tell you who was in attendance.

Q. As briefly as possible. Give us the high spots. A. The three creditors whose names have been mentioned and

2524 who were the petitioning creditors, or some one of the firm were present. I have no definite impression or recollection of the individuals that were there. I know their firms were represented there. Mr. Hoffman, Mr. Wishbow, Mr. Kandell and Mr. Cohen, and then I believe there was a Goldstein, I had forgotten about him. He was a representative of the Credit Agency of America, an association that represented haberdashery creditors. And then there were some others there. It seems as though in the period of time everybody has lost track of some of them. It seems there is a forgotten group. I know definitely that some others were present and apparently it is only lately that has come to
2525 the surface, that the question has come to the surface at this trial. I had forgotten about him.

Q. Tell us what occurred and let us get along. Please make it brief. A. Hoffman was called upon by Mr. Kandell to tell about the facts of the situation, which he did in substance as he testified, or others testified, of what the elements were contained in the letter that he sent out on March 24, the letter about the liabilities being $2500 and about the inventory of stock and fixtures being worth between 2200 and $2500. That there were some relief tickets allegedly in the possession of the assignee of about $250, and then some claims supposedly outstanding against the
2526 City of New York in the sum of about $200.

After giving that phase of the story he told about the circumstances surrounding the case, the fact that his client was incarcerated, that he had not represented the client in connection with his incarceration, but that he was representing him in connection with this matter, and he wanted to do everything he could for Paul Hymowitz and wanted the creditors' good will. He was particularly concerned about getting the creditors' good will, because he said, "When Hymowitz comes out of jail, he wants to have their good will for him."

He then went along in that vein. The creditors at first criticised him. I don't know particularly, but this is the tenor of what took place. Criticised him first for having had an assignment filed. They pointed out to him that if he were so concerned about the good will of creditors and so concerned about the reaction against Hymowitz, that the appropriate and proper thing to have done was to call the creditors together. It was a small matter. Creditors are always willing to cooperate in cases involving circumstances where a man is taken away from his business, and generally creditors are always willing to go along, to try to work something out. It is the feasible thing to do, and what should have been done if the creditors had been called together, attempted to keep the debtor, either through some representative of the family, in business, or to give him an extension of his debts and make some adjustment along that line, or have had an opportunity to get somebody in to buy the stock and get the best price they could and give the creditors the greatest distribution that could be made in those circumstances with a minimum of expense; and they told Mr. Hoffman and Mr. Wishbow that was their practice, and that was always what they wanted to do. Of course they criticised him for having incurred auctioneer's expenses and they particularly made a point of the fact— 2527 2528 2529

Mr. Walsh: Who is "they"? Is this the general tenor of the remarks?

The Witness: A lot of various individuals. It may have been Mr. Schwartz or Mr. Kreiselman or Goldstein, it may have been Mr. Kandell, it may have been myself. I am just giving you the substance of it. It is physically impossible, it is wholly illogical for me to remember who made a particular comment. I only know in general what took place and I repeated it before the grand jury in 1938 and I told it to this grand jury—.

2530 Mr. Walsh: I object to these side remarks.

The Court: Yes. Give us the testimony as to what you recall happened, which you were going to particularly point out.

The Witness: The creditors particularly pointed out to him that it indicated his bad faith and that this alleged good will on the part of the creditors was a fact on the very day, March 24th, the very day the assignment was filed, an order of sale had been obtained, a notice of sale had gone out over a short period, that the assets were to be sold, namely, ten days, and the sale had been scheduled for April 5th.

2531 It seems to me, why, all the rush, and why the attorney could have gone forward as quickly as he did with obtaining an order as rapidly as he did, that he had to physically wait at the Judge's chambers to get an order through, when the usual mechanics—

Mr. Walsh: Was this Schwartz?

The Witness: No, this may be Goldman talking Kandell, it may have been Mr. Goldstein or it may have been one of the other creditors. I don't purport to convey in the language I am using that it was the language that was used at this meeting by any manner of means.

2532 Q. Well, this had been done without any notice to the creditors? A. That is correct. And then when that thing had subsided, after this pro and con or, rather, this talk of the justification and the complaints and criticisms et cetera, the thing finally simmered down to what should be done, and with these fellows having taken the original position, if an assignment was not made they would have handled the case anyway, first having the place open for inspection, and each one attempting to get a buyer for the merchandise, and in general that was their attitude. They then went on and said, "This is what we want. We don't

want an assignment, because in that case we will have to wait for our money for a year and we will wind up with no dividend." Hoffman was endeavoring to demonstrate to them that they could get a substantial dividend in the assignment. Someone took that letter and said, "You say nearly 100 cents is payable." It didn't take very long for Mr. Hoffman and Mr. Wishbow—I don't know that Mr. Wishbow had any part in that, but that was so far-fetched they dropped it. They had no further argument or discussion about that. It was so far-fetched. 253

Q. Was there a theory about the assets? A. Yes, sir, in this respect: The creditors—you say $2500? Now we know that the stock will bring only 60 cents on the dollar in an auction sale, such as you are about to conduct, that is the gross figure, and after deducting auctioneer's expenses, advertising, lotting and the auctioneer's charge of 10 per cent, that is gross, 40 to 60 per cent, it is our understanding with that starting point, with the relief tickets and the claim of the city would be contested by the city at best, because of the involvement of Hymowitz in that situation, that they could not hope ever to get any dividend as near 100 cents on the dollar, that was dropped very rapidly, so rapidly that you could not tell that it had been discussed. It was never brought up thereafter, and it was not discussed further. 253

I think the discussion was then had—he said something, Mr. Hoffman, about there being money loan claims in the case, and the creditors called his attention to the fact that there was no mention of additional liabilities in the letter, that the letter only said $2500. He said, "There are money loan claims." They said, "You will have to prove it. Have you books and records to substantiate it?" He said, "These are the claims that were told to me by relatives," some brother of Hymowitz, and he said that was told to him and it was claimed they were in a position to substantiate them. 253

2536 He said, "You know that I could have these claims allowed here. I can permit them to be allowed in the assignment proceedings." And then the thing went on to the question of settling the case.

He said—well, he would waive the claim if that would satisfy the creditors. Well, he said something about the fact of not doing us a favor. I remember that particular expression, "those claims are no good anyhow"—

Mr. Walsh: Will you please keep your voice up?

A. (Continued) That is the usual claim made by debtors'
2537 attorneys, that there are money loan claims and also seems to be a sort of bait to the creditors to conduct them the way the debtor or the debtor's attorney wants to conduct them.

The thing was not getting anywhere. There was some confusion and people were getting off the track, going off on a tangent, until Hoffman finally said he would go along with it, yet he was not definitely committed on having the stock looked at by prospective buyers sent by the creditors, and in one particular instance, in order to obtain a satisfactory number and convey the assignment and dispose of the matter over the year it usually takes, and at that
2538 point Mr. Goldstein or somebody else asked him to step out, and he had been out a few minutes, and the creditors talking among themselves said something about the fact that he had not yet made an investigation in the case. Some person, other than these three, and when I say Goldstein, I have no recollection that it was Goldstein, but I use his name because somebody other than those three said it, that no accountant had gone over the records, and it was pointed out that there were no records, and it was asked whether anybody knew of irregularities, financial statements in the case, et cetera.

There was no discussion on that. It seemed to be the

consensus of view that the matter was a small one, and the 2539
incurring of any expense for an accountant would be useless and it would not serve any particular purpose because of the liabilities, the merchandise creditors, as it appeared, were about $1900 or $2000.

It developed that these $2500 liabilities comprised about $1900 or $2,000 of merchandise, and a $200 claim of the National City Bank, who had co-makers on the loan and the rent claim and maybe some small incidental claims like gas, electricity, incidentals, but the total I think was about five or six hundred dollars.

Mr. Hoffman left with Mr. Wishbow and stayed outside a little while. Then somebody said, "Well," they said to 2540
me, directing my attention to the fact that "you are a lawyer; Mr. Hoffman is a lawyer; go out and see if you cannot get him to use his aid, and straighten this thing out."

Mr. Walsh: Can I get who told you that?

The Witness: I said somebody in the room. I have no definite recollection who it was.

While he was in that room and while the creditors were arguing with him, it occurred to me that one of the obvious arguments that would appeal to the debtor was what the creditors wanted, namely, that if he would go along with the proposition, as outlined by 2541
the creditors, his client would derive a definite and specific benefit by that consummation of the matter in that way; because under their plan each creditor would be permitted to give him a consent, a release, a discharge, of any claim in excess of the amount they would receive under this plan. And when they said to me, it occurred to me it would be a good opportunity to send them out into the street, because an attorney may not know the subject, and might be somewhat sensitive about another attorney point-

2542 ing out to him something that you may believe he does not know in the presence of laymen.

Q. If you told him that in the presence of another lawyer it would not have the same effect? A. Well, at any rate I was motivated or catapaulted to go outside. It was a perfectly agreeable task. I had spent some time there; it had been going on for about three-quarters of an hour or so, and by then I wanted to get away. The matter was getting into a hubbub, and we wanted to get away.

Mr. Walsh: Make it brief.

2543 Q. You went outside? A. Yes, sir. The first thing I pointed out to Mr. Hoffman was the fact, I described the fact outside of the advantage to his debtor, to his client, in the plan as outlined by the creditors that he would get a release under that plan, whereas under the assignment he would get no release at all, because under the assignment there is no discharge of the balance of liabilities, and Mr. Hoffman told me he knew that; and then he said to me, "Where do I come off? Here I have a case, Kolman is the assignee; I am the attorney for the assignee, and surely you won't oust an attorney from a case. Say I lost the matter I would lose the fee involved."

2544 I said, "You are not going to lose any fee." I said, "The creditors," I said, "will work out this case as in every case, whether before an assignment is executed and filed or after executed or filed, or in any proceeding creditors know they must recognize the fact that there are items that have got to be paid in full, that there has to be a fund for administration expenses and the priority claims, and then there is to be a fund for general creditors."

Well, after some talk there that seemed to satisfy them and we went back to the creditors' meeting, and he didn't yet seem to be in full accord with that, and the creditors talked some more.

Q. In regard to what? A. The plan. 2545

Q. What was the plan? A. The creditors had wanted that this stock be inspected, that each one of them have an opportunity to look at the stock, that they be afforded an opportunity to try to interest as many people as they possibly could in obtaining a buyer who would pay the highest figure for the assets, and that the assignment be disposed of, vacated, and that the creditors take the pro rata amount that would be determined at a later period when the creditors and Mr. Hoffman got together, after they determine the amount that the stock would bring.

I wanted to add this before. I finished the discussion as to what took place. 2546

When he came back and was still adamant about going along—I would not say adamant then, but originally—but sort of being on the borderline of whether to go along with it or not,—he again endeavored to urge the creditors that they could get more under the assignment than any other way; that expenses had been incurred and that the sale should take place, and that any delay would cause additional expenses and the like. And the creditors said at one point—at some other point—that they would get very little out of the case, and then finally, after some talk, he finally agreed to go along with that.

Q. That was after you came back? A. That is correct. 2547

Q. Can you tell us very briefly what he said he would do? A. He said he would open the store.

Mr. Corbin: Your Honor, Mr. Walsh is laughing audibly.

Mr. Walsh: I laughed at the remark made "very briefly", because he asked the witness to tell the last story briefly.

The Court: Of course any laughs, signs or indications, remarks, anything, made by counsel—on either side, as far as that is concerned—are to be dis-

2548 regarded. It is the duty of counsel to ask proper questions.

Mr. Walsh: I would like to apologize at this time, your Honor. I didn't mean anything by it.

The Court: That is all right, Mr. Walsh.

Q. Will you tell us briefly what occurred, what Hoffman refused to do after the return to the meeting of the creditors? A. The upshot of that meant to us Hoffman agreed to open up the store a few days later, and the store was to be open during the entire day, or at various hours during that day.

2549 Q. He was to open the store for prospective buyers' inspection? A. That is right.

Q. What next? A. And after those prospective purchasers had had an opportunity to look at the place he was to get together with the creditors and determine the highest price that they could get. That was satisfactory to him and to his auctioneer, and then dispose of the matter by vacating the assignment and selling the assets, and by notice to all of the creditors.

Q. Something has been said there about creditors not amounting to much. Can you give us some figures as to the amount of claims represented at the meeting? A. Well, 2550 our client, Harry Levy; his claim was about $260-odd, but the three petitioning creditors, I think their claims were around $350 or $360. Butler Bros. claim I heard testified here was about four hundred and some odd dollars. Mr. Goldstein, I don't know what he represented, but a hundred or two hundred dollars—I don't know what amount it may have been; and then there were some others. But my definite impression is that this particular group maybe there was a representation of anywhere between a half and two-thirds of the merchandise creditors. That was the impression I had obtained on that day.

Q. Mr. Hoffman has testified about conferences that he had with you and Mr. Wishbow. By the way, was Wishbow present when this talk took place? A. Outside? 2551

Q. Outside. A. Yes, sir.

Q. Did Mr. Hoffman say to you out there in words or substance, or did you say to him, rather, that you could arrange for a private sale, that the buyer would be obtained either by you or Mr. Kandell, and that you with the help of Kandell would try to make an arrangement of 40 per cent of the creditors' claims. Was there some talk about your having told us there was a talk about getting a buyer or trying to get a private buyer? A. Yes, sir.

Q. Was there a talk about 40 per cent? A. No, sir. 2552

Q. The creditors had not had any inspection then? A. No, they had not.

Q. So they didn't express themselves as to the value of the stock? A. No, other than what I mentioned, that they discussed with Mr. Hoffman about these percentages and variations.

Q. Here is the important thing, "he"—referring to you—"said that would take about a thousand dollars, 40 per cent," and that you said that you could arrange with Kandell to have this buyer pay a certain amount of money for the assets in the store, that only a part of the money that you and Kandell would obtain from this buyer would be disclosed to the creditors, and that the amount that they would show to the creditors would be the sum of $1,000, or a couple of hundred dollars more, and that the balance would be kept in secret and would be split among Kandell, yourself and Hoffman? A. What is the question? 2553

Q. (Continued) Now, was that or anything like that said at that meeting? A. No.

Q. Outside of the creditors' meeting— A. Can I point out how illogical that is?

Q. And then Hoffman's testified you propositioned him

2554 to the following effect, that the difference reported to creditors and the amount actually obtained from a private buyer, no amount being stated at that time, he said would be split among you three, Kandell, Hoffman and Goldman. Was there anything like that said? A. No.

Q. Was that said in substance? A. Absolutely not.

Q. Was there any proposition that was made either by you or by Wishbow or Hoffman, or any talk at that time, in words or effect, that one price would be obtained and that the creditors would be kept in the dark with respect to the amount of it? A. No.

2555 Q. Then there is something in the record that later, after the meeting broke up, Hoffman said it occurred at this time,—that is right, isn't it?

Mr. Walsh: Yes.

Q. Hoffman also said at that time that he spoke about some letter going out to creditors. On page 81 he said "* * * with regard to the three creditors who were in the room he"—that means you—"would throw them each a ten-dollar bill and they would shut their mouths." Did you say that to him? A. No. I never knew those people, never had any business with them.

2556 Q. I was just going to ask you that. Did you know who they were? A. No, only knew them by name, I ran across them on occasions, but never had any matter or business with them and didn't know who they were.

Q. Did you say to Hoffman at that time, or at any other time or place, that day about that, that a lawyer should keep the creditors at a meeting silent, that is, in order to keep their mouths shut about this deal, that you would throw them each a $10-bill? A. I didn't say anything like that or near to it or in connection with it.

Mr. Walsh: What page is it?

Mr. Corbin: Page 81. 2557

Q. So you say, Mr. Schwartz, the witness who was here yesterday, was present at that meeting? A. Yes, sir; he said that he was there. I assume that that was so; I have no definite impression. I know Schwartz and Zuckerman was a creditor that was there.

Q. Did you have any thought at that time, at the time of that meeting or at the time of these alleged conferences outside of the meeting room, with Hoffman, that Schwartz or any of those other creditors present were dishonest?

Mr. Walsh: I object to the form of that question whether or not he had any thought about anything. 2558

The Court: Objection overruled.

Q. (Read) A. No.

Q. Did you have any thought in your mind at that time that you could go to Schwartz, or any of the other creditors, and say to him in effect "We are going to get one price for the stock, but we are going to keep that a secret from the rest of the creditors, and we are only going to divide among you creditors a smaller amount, and in order that you keep your mouths shut about it I will give you a $10 bill? Did you have any such thought in your mind?

2559

Mr. Walsh: I object to the form of the question.

The Court: Sustained.

Mr. Corbin: Exception.

Q. Did you have any thought or belief that Schwartz or any of the other creditors would be susceptible to such a proposition?

Mr. Walsh: I object to that.

The Court: Yes. You are leading the witness.

Mr. Corbin: I am asking for his intent, Judge.

Mr. Walsh: You didn't ask him, though.

2560 The Court: You have been asking leading questions repeatedly, and I have sustained the objection.

Mr. Corbin: Exception, your Honor.

Q. Did you know, or had you heard, prior to that date of any of those creditors present at that meeting doing anything dishonest? A. Pardon me: I didn't get it.

Q. Did you then know or had you heard that they had done anything in the past, anything dishonest? A. No.

Q. Any reason to believe they were dishonest? A. None.

Q. Did you ever know of them, or any of them, taking any bribe for keeping their mouths shut about anything?

2561 A. I did not.

Q. Did you think at that time that Schwartz would take less than his claim for a $10 bill? A. I did not.

Mr. Walsh: I object to that.

The Court: Overruled.

Mr. Walsh: It is leading and calling for the operation of this witness's mind, and it is not relevant either.

The Court: I overrule the objection.

A. I said I did not.

2562 Q. Well, some notations were made, were they, when the creditors were going to have their buyers appear at the store and inspect the stock? A. There was.

Q. And you dispersed then? A. That is correct.

Q. What next did you hear about the Hymowitz matter? A. When I got back to the office, either that same day or the next day, when I came in contact with my brother Teddy, I told him what had transpired at the meeting, and I told him that there was going to be a reconvening of this creditor group or creditors' committee, or what properly may be termed creditors' committee, because they designated themselves as such.

Q. All right. You told your brother what had happened at the meeting. 2563

Mr. Walsh: I object to that. I think it is not competent what he told his brother.

The Court: Objection overruled.

Mr. Walsh: It is leading.

A. I told my brother what happened at the meeting, that this group was going to reconvene again, and that the store was going to be open for inspection, and I gave him the date and hours that the store was to be open for inspection. 2564

Q. Now, you had attended the meeting in Teddy's absence, Teddy didn't attend that meeting? A. He did not.

Q. And you had reported back to Teddy what had occurred, is that right? A. Yes, sir.

Q. And now did you hear anything more about the matter? A. I didn't hear anything more about the matter until I received a telephone call from Wishbow on April 3rd or April 5th. Wishbow called me up and said, "About this petition in bankruptcy that has been filed." I said, "Now, wait a minute." I said, "What petition in bankruptcy?" I had lost track of the matter completely, and didn't know what was going on: I said, "Wait a minute. Teddy is handling this matter," and I called him over. 2565

Q. Is that the first you had heard that any petition in bankruptcy had been filed? A. That is right.

Q. You said you called Teddy over? A. Yes, sir.

Q. Is this while you were on the telephone? A. That is right. And Teddy told him a petition in bankruptcy is filed and that Jacob Schulman is the attorney for the petitioning creditors. Wishbow kept talking about going forward with the sale on Monday and wanted us to get together on the situation. I said I was not handling the matter; I would have to talk to Teddy or Schulman, the

2566 attorney for the petitioning creditors, and after a few words we hung up.

Q. Did you hang up on him while he was talking, is that what you mean? A. No.

Q. After a few words that ended that? A. That is right.

Q. When did you next hear about it or have anything to do with it? A. I got a telephone call from Mr. Schulman on April 7th, and he told me that he was over before Judge Coxe in connection with a motion made by Mr. Hoffman to vacate a stay he had obtained staying the assignee's sale, and that Hoffman and he wanted to dis-
2567 cuss the matter, and wanted me to go over to his office. He told me Judge Coxe had suggested they get together and adjust the matter. I said I was not handling the matter, that Teddy was, and that Teddy would have to go over.

He said, "Well, I want to tell you what took place before Judge Coxe." He said, "Hoffman"—

Mr. Walsh: Was this over the telephone?

The Witness: Yes, sir. He said, "Hoffman made some comments about you, about the fact that you were trying to break into his case." He may have used some language that aroused my resentment of
2568 things said before a judge in my absence.

I said, "I'm coming right over." And I did come over.

Q. You went over to Schulman's office? A. Yes, sir, which is at 277 Broadway. We are located at 302, just about a block away.

Q. And who was there when you got there? A. Hoffman and Schulman.

Q. By the way, did you have any knowledge or information or suspicion that Hoffman was there in connection with or in cooperation with the F. B. I. men? A. I did not.

Q. Or that the F. B. I. men had instruments on the other side of the wall, to take conversation or anything of that kind? A. I had no knowledge of that, no. 2569

Q. You walked in there and there was Hoffman and Schulman? A. Yes, sir.

Q. What was said? A. I upbraided Hoffman. I asked him what took place before Judge Coxe. I wanted to get it from him. He said Schulman somewhat stirred him on and he told him that I wanted to break into the case. He said the petition was brought about by the fact that I could not break into his case. I said, "the first and the decent thing you should have done, if you had anything to say about me to Judge Coxe, was to tell me that you were going to say to Judge Coxe and afforded me an opportunity to be there." I told him general courtesy in the profession required that one lawyer give notice to another lawyer if he was going to appear before a judge, and to afford him an opportunity to make a reply. I said, "I think every lawyer is entitled to such a chance to make an answer." 2570

One word led to another. It was a heated controversy, is the way I can sum it up.

Q. What was the substance, in addition to what you have said? A. After this argument—this argument went on for a little while—Mr. Schulman endeavored to interfere and said, "I didn't call you over for this purpose. The judge said get together, and let us see what we can do here." He said, "You have no right to permit your personal feelings to enter into the situation no matter what took place, you have to submerge your own feelings in the matter. You have creditors' interests involved, and you ought to get down to a discussion in connection with the matter." 2571

Well, I should say the excitement probably subdued a bit, and then there was a discussion about the stock. Hoff-

2572 man again using the same arguments that he used before the creditors' meeting, and then there was a general discussion in connection with that matter. And finally I left and made a suggestion as to how to determine if there were any uncertainty or if there were any number of people that everybody seemed to be sending down to the place, and what the place was actually worth and any question in anybody's mind of underwriters' salvage. They went over there, and I made that suggestion and then I left.

Q. You have not attempted to give us word for word what was said there, have you? A. No, I have not.

2573 Q. Was there anything said then or later, at any time, so far as you know or heard, about Mr. Severin Scott being paid 25 or $50, or any other sum in order to withdraw the motion that Endicott-Johnson had made? A. Nothing like that.

Q. Or that Mr. Scott would be cut in for $25 or $50? A. I never heard anything like that.

Q. Out of any fund, secret or otherwise? A. Never heard of it.

Q. Now the preparation of these papers, the bill of sale and dismissal of the petition and all that, was handled by your brother? A. That is right.

2574 Q. The matter of mechanics in the office, it was his job? A. It was his case. It was his matter to handle right from the inception.

Q. Did you or your firm ever get any money out of that Hymowitz matter from beginning to end? A. We did not.

Q. Did you ever ask to get any money out of it on the basis of a sale of the assets that is alleged in this indictment for $1900? A. We did not.

Q. Did you ever agree, or know of any agreement, that the stock would be sold to a private purchaser for $1900.

and $1500 to be disclosed to the creditors and the difference of $400 split among you lawyers? A. I did not. 2575

Q. Or split the money between anybody, including Kandell? A. No.

Q. Did you ever agree or conspire with the other defendants, or any of the other defendants, or with any one else, to cheat the creditors by reporting to them a sale at one sum, whereas in truth, the sale was at a larger sum or to be at a larger sum there would be a kickback to you? A. I did not.

Q. Or a kickback to anybody? A. No, sir.

Q. Did you hear of any such thing in connection with the Hymowitz matter? A. No. 2576

Q. Until this indictment? A. That is correct. May I say something here?

Q. All right. Go ahead. A. That $400 allegation, the first time I heard anything about it was when I read it in the newspapers, but I appeared before the two grand juries, one acquitted me in 1938, and voluntarily, and anxiously appeared before the grand jury that handed up this indictment in 1940, and I testified at length voluntarily, appearing for months, originally asked Mr. Schachner to let me come over.

Mr. Walsh: I object to that, your Honor. 2577

The Court: I sustain the objection as to that. You have gone far enough.

Q. You heard me read to the jury this morning the original complaint in this case? A. I did.

Q. Were you arrested at that time when Kandell was arrested? A. I was not.

Q. Was any charge made against you? A. None at all. And I appeared before the 1938 grand jury because I had learned of Mr. Kandell's arrest, and I wanted to go out and find out and give them every aid—

2578 Mr. Walsh: I object to that, your Honor.

The Court: Sustained.

Q. Never mind. The first time that there was any charge against you, so far as you know, was in 1940, January or February of this year, isn't that right? A. Further than that—

Q. Is that right? Just right or wrong? A. Yes, sir.

Mr. Corbin: That is all—may I just do a slight bit of arithmetic.

2579 Q. If $80, if any arrangement were made whereby $80 was to be given to three sources, one of those sources being you or your firm, what would be your cut in the $80, by virtue of your firm? A. That would have to be predicated upon what I heard here testified in the same respect I heard Mr. Hoffman say—

Mr. Walsh: I object to that, if your Honor pleases.

The Court: Yes. I will sustain the objection.

Q. What was the percentage of your interest in your firm? A. I—

2580 Mr. Walsh: Now I wish this witness would wait till I make a legal objection.

The Court: Yes.

Q. What was the percentage in your firm?

Mr. Walsh: I object to that as improper, if your Honor pleases, on the ground that there is no charge that his firm was going to—the specific allegation is that he and his brother were getting it.

The Court: I will overrule it.

Mr. Walsh: And it is immaterial and irrelevant.

The Court: I will overrule the objection. 2581

A. It wouldn't make very much difference at that because—

The Court: The question is: What interest did you have in the firm?

The Witness: 40 per cent.

Mr. Corbin: All right.

Cross examination by Mr. Walsh:

Q. Now you say, Mr. Goldman, that you had nothing to do with this other than appearing at the meeting on March the 25th at the creditors? A. That is correct, and 2582 attending this conference at Mr. Schulman's office on April the 7th, and a telephone call from Mr. Wishbow, I think, on April the 3rd.

Q. I mean outside of that, what you have already testified to on direct— A. That is correct.

Q. (continuing) You had nothing more to do with that? A. That is correct.

Q. Did you keep in touch with your brother Teddy Goldman— A. Only insofar—

Q. —concerning, for instance, after Wishbow called you up—you say you don't remember if it was the 3rd or 5th, is that correct? A. That is correct. 2583

Q. It has been testified here that it was the 3rd. If I remember correctly, the testimony is—and I say this to refresh your recollection so that you can fix the date—that the hearing before Judge Coxe was on April the 5th. Now are we agreed that it was prior to the hearing that Wishbow called up? A. Well, even if I—I wouldn't know whether it was April 3rd or 5th by the statement you just made because it could have been before the hearing—

Q. Was it prior to the hearing before Judge Coxe? A. Oh, yes.

2584 Q. And that was on April the 5th? A. That is right.

Q. Did Wishbow tell you on that occasion that Hoffman was preparing an affidavit? A. He did not.

Q. In which he, Hoffman, was setting forth the conversation as you have heard Hoffman testify from the stand, setting forth all the facts in order to make a motion to dismiss the petition in bankruptcy? A. He did not.

Q. He never told you that? A. No, sir.

Q. Did you tell Wishbow on that occasion that he was lying? A. Lying as far as what?

Q. Lying insofar as the allegations that were contained in this affidavit are concerned and which he recounted
2585 to you over the telephone? A. He never made any such allegations.

Q. In other words, what was the conversation that you had, between Wishbow and yourself, whatever date it was? A. Wishbow started off by telling me about the petition in bankruptcy and tried to have me to use my influence and my good offices—I am using my own language—in endeavoring to get him to continue on with the sale and keeping Hoffman and Kolman in the assignment proceedings, and that was the extent of this conversation. You must bear in mind that Wishbow was the auctioneer in this matter.

2586 Q. I understand that. And that was the sum total of the conversation? A. In substance, yes.

Q. Well, do you remember anything else at this time? A. No.

Mr. Corbin: You mean in addition to what he said on direct examination, I suppose.

Mr. Walsh: I asked him for the full and complete conversation that he had with Mr. Wishbow over the telephone.

Mr. Corbin: Well, I don't want him to make that point later on.

Mr. Walsh: I am not trying to make any point. 2587
I just want to get the truth here. I asked him if in fact that was said.

Q. Didn't I ask you that question? A. Yes.
Q. Isn't that a fact? A. Yes.
Q. Well, what is it? A. Whatever I testified to, that you asked me.

The Court: He is asking what was the conversation between you and Wishbow, so go ahead and give that conversation as you recall it.

Q. Over the telephone? A. All right. If you want me 2588
to give you the additional details about the talk, that I told him I wasn't handling the matter, the fact that my brother Teddy and that Mr. Schulman was the attorney for the petitioning creditors, that is some items that I left out of your—the answer to your question.

Q. You also testified on direct, did you not, that you called Teddy over? A. No, I called up Teddy.

Q. Well, did Teddy come over and tell you? A. I don't recall. I may have gone out—

Q. Didn't you say on direct just a few moments ago that the petition had been filed and you did not know 2589
what Wishbow was talking about? A. I first told Wishbow that I did not know what he was talking about and I would have to wait—

Q. May I interrupt for a moment? Did you or did you not just testify on direct examination that during the telephone conversation with Mr. Wishbow you called your brother Teddy over and asked him whether or not a petition in bankruptcy had been filed? Can you answer that yes or no. A. Well, I either called him over, put him on the extension then—

Q. Well, did you speak with Teddy on that occasion? A. I did.

2590 Q. And did you ask him whether or not a petition in bankruptcy had been filed? A. My present recollection is that I did.

Q. And was that the reason that you told Wishbow that you would have nothing more to do with it, that it was Teddy's matter? A. No. The reason I told him that was that it was Teddy's matter from the inception. Teddy handles Harry Levy's business.

Q. How long have you known Harry Levy? A. Quite a number of years.

Q. He used to be your client, wasn't he? A. There is no distinction so far as the office is concerned—he was
2591 an office client.

Q. So there is no distinction between yourself and Teddy so far as his client is concerned. He was a client of you and Teddy, is that correct? A. No. He was a client of the firm but Teddy handled his matters in the main.

Q. When did you first find out about this Hymowitz matter? A. On March 24th.

Q. And who told you? A. My brother Teddy.

Q. And did you have the conversation with him at that occasion? A. I did.

Q. Was anything on that occasion said about taking a retainer over and getting in on this matter? A. No.
2592 Q. As co-attorney? A. No.

Q. Did Teddy do that on his own responsibility? A. I assume so.

Q. You heard him testify? A. I heard him also say that the clients wanted to see the creditors got control and if he would have told me about it, either on March 24th or 25th, or at any other time, I would have—

Q. Would you have suggested that he take the retainer with him? A. I would have told him to see that the client got what he wanted. I would have no objection to his doing it. I would have approved of—I beg your pardon?

Q. It is a fact, however, that creditors may have control 2593
and your firm need not be retained. It is a fact, isn't it? A. There has to be some creditors' attorney representing the creditors.

Q. That is a fact, isn't it? A. Why, certainly.

Q. Your firm wasn't the only firm in the city or the only firm that represented creditors in that insolvency proceeding: is that a fact? A. In every insolvency case there is more than a creditor, yet there is only one attorney representing the creditor body.

Q. I understand. That isn't the question. A. What is the question?

Q. My question is this: that were you the only attorney 2594
for the creditors that could be retained on that occasion? A. Well, as far as we were concerned we were serving our client, Harry Levy. We had no other creditor interested and when we were serving him we were serving the creditor body, in conserving the assets in accordance with Harry Levy's wishes and experience in these matters.

Q. And if my memory serves me correctly, you said that had you known that you would have sent Teddy over with the retainer the next day. A. I would have—a method of approach—I don't particularly want to now adopt it, but I say I would have approved the practice of having 2595
an attorney for creditors step into a picture where an attorney for a debtor has taken hold of assets.

Q. As a matter of fact, didn't Teddy first tell you that there were claims of the mother and the sister of Paul Hymowitz, and that Hoffman was representing them? A. No, I don't think he told me that. He may have: I don't recall.

Q. So, so far as you know Hoffman may have represented Mrs. Hymowitz and the sister of Hymowitz? A. That would still be representing the debtor. The relationship is so close.

2596 Q. I understand that. A. That we couldn't put these creditors in that category.

Q. Will you please allow me to ask a question.

Mr. Corbin: I don't think you have to lecture the witness.

Mr. Walsh: I am only doing this, if the Court please—

The Court: Very well. I will settle it. Mr. Witness, let him ask the question, and Mr. District Attorney, give him time to answer. Now proceed. Propound the question.

2597 Q. Have you on any other occasion sent Teddy Goldman over to any assignee, or the attorney for any assignee with a retainer as co-attorney in the particular insolvency proceeding? A. I don't recall.

Mr. Corbin: I object to that as immaterial.

Mr. Walsh: I think that shows motive.

The Court: I will overrule the objection.

A. I don't recall.

Mr. Corbin: There is no evidence that he sent him over in this case.

2598 Q. You don't recall?

Mr. Corbin: Exception.

Q. Do you deny that you ever did that? A. I cannot deny it if I don't recall.

Mr. Corbin: Exception.

The Court: I will sustain the objection upon the ground that he has already answered it.

Q. You are ready to leave it "you don't recall?" A. That is correct.

Q. You know, quite a little of bankruptcy work, do you not, sir? I mean, with due modesty. A. Yes. I hope I knew more. 2599

Q. What is that? A. I hope I knew more—well, I don't mean that.

Q. Did Teddy tell you on the night of March 24th that he was going over there with a co-attorney retainer? A. No.

Q. Did you know whether or not Teddy had gone over on March 25th with a co-retainer when you appeared at the meeting of creditors on March 25th? A. I don't recall whether I did.

Q. Is it possible that you did? A. It is possible that I did know and it is possible that I didn't know. 2600

Q. Well, did Teddy ever tell you that when he was over there and had a conversation with Mr. Hoffman on March the 25th that he said that unless he was retained that "we would throw them into bankruptcy?" A. Teddy never told me such a thing.

Q. Teddy never told you that? A. No, nor did I hear it anywheres else except here in court.

Q. Mr. Kandell never told you that? A. No.

Q. Now I am going to skip over everything so far as the meeting goes because you described that briefly this morning. By the way, do you know what a whistling petition is? A. Never heard of it in my life. You— 2601

Mr. Corbin: I did not catch that.

Mr. Fielding: I never heard of it.

A. I would be curious to know what it is.

Q. A whistling petition—

Mr. Corbin: I heard of a whistling petitioner but I never heard—

Mr. Walsh: May I explain? The whistling petitioner, I have heard of that, and that is the result

of the whistling petition. A whistling petition is a petition similar—

Mr. Corbin: I object to the "whistling" business.

Mr. Walsh: He asked what it was, if your Honor please.

The Court: I sustain it.

Mr. Walsh: I would like to explain it to him.

Mr. Corbin: Well, he can explain—

The Court: He said he never heard of a whistling petition.

Mr. Corbin: I don't think anybody ever heard of it. I don't know whether they have it down in Mississippi, Judge.

The Court: I don't think we will discuss it. Proceed with your next question.

A. Mr. Walsh, that is a new one on me.

Mr. Walsh: Can I tell him what it is?

A. No, you can tell me afterwards.

The Court: If you have a question you want to propound to him, you may do so, but it is not necessary to explain what a whistling petition is. If you want to ask about some petition or any type of petition you may proceed along that line.

Q. The petition that was filed in this case was a petition that could be dismissed because it did not state facts sufficient to constitute an act of bankruptcy? A. Every petition can be dismissed.

Q. But some have to have notice to the creditors. A. It is all a method of procedure adopted by the lawyer that handles the matter. You can dismiss an involuntary petition with allegations, without; you can dismiss a voluntary petition. There isn't a petition that is filed that can not be dismissed.

Q. With consent? A. I beg your pardon? 260

Q. Some of them— A. No, no, you need not have any consent; not necessary at all. You can file a petition and dismiss it without any consent.

Q. Can you file a petition in which there is an assignment for the benefit of creditors— A. And have it dismissed?

Q. —without the consent of the creditors? A. Yes, you can.

(Inaudible remark made by Mr. Corbin.)

Mr. Walsh: Do you want to testify, too, Mr. Corbin?

Mr. Corbin: I can testify to that. 2606

The Court: Very well; one at a time, gentlemen. Proceed with the questioning of this witness.

Q. As a matter of fact, Mr. Goldman, this petition that was filed in this case was subsequently dismissed on the ground that it did not state facts sufficient—wait, I want to get the exact language. A. You are just using legal terminology. It was demurrable, this petition.

Q. And a motion was signed by Mr. Hoffman and a copy was sent to Mr. Schulman? A. And the procedure did not—

Q. And he did not object to it? A. Mr. Walsh, may I 2607
point this out, that with or without that allegation this petition could be dismissed. Now I have heard a gooddeal of that talk, questions asked. We, when we sent out creditors notice of the vacatur of the assignment—

Q. Please— A. Will you let me finish?

Q. Yes, sure. A. I have been—

Q. Will you make this briefly, though. A. When we sent out these notices to the creditors in connection with the vacatur of the assignment, we sent that by registered mail and we asked for the consent of every creditor through this 40 per cent arrangement.

2608 Q. And were you explaining that legal proposition, or are you going on to something else? A. I am giving you the facts of this case which I have been trying to do for two years and which I successfully did in 1938.

Mr. Walsh: Would you read the question that I asked—or I will withdraw it and start again.

Q. May I do that? A. Pardon me?

Q. May we start anew, or did you want to say something else? A. I can add—I want to finish this, what I was explaining to you, if you will permit me.

2609 Q. Go ahead. A. And I said that we had sent out by registered mail—and when I say "we" it was usual in this case. I didn't have any direct or personal contact with it—and contained in that registered notice was a notice of the sale of these assets and each creditor got it by registered mail. In addition to that—

Q. What date was that? A. May the 13th.

Q. May the 13th, 1900 and what? A. 1937.

Q. 1937. A. And in addition to that—

Q. Yes. Go ahead, sir. A. In addition to that there was contained in that envelope a letter to the creditors explaining to them that arrangement we made to dismiss

2610 the petition. There was also contained in that enclosure a form of notice, a form of consent to be signed by each creditor, which consent in effect would vacate the assignment, discharge the assignee and release him of his bond and giving creditors' consent, that is, of the 40 percent settlement. Now this entire plan was predicated and dependent upon the consent of each creditor.

Q. You knew all about the plan? A. I know now all about the plan.

Q. You knew then, didn't you? A. When?

Q. When it was being enacted? A. On March the 25th?

Q. On March the 25th? A. That is correct.

Q. You knew about the meeting? A. That is correct. 2611

Q. On March the 3rd you knew that a petition had been filed? A. April the 3rd.

Q. April the 3rd; on March the 5th— A. April the 5th.

Q. April the 5th you knew that there was a meeting? A. Yes.

Q. Before Judge Coxe, and then you subsequently went over on April the 7th to Mr. Schulman? A. No, no. You are trying to infer that I knew those things on those particular days? I knew all those things at a subsequent period. I knew March 25th on March 25th.

Q. Because you were there? A. And I knew March 24th on that day—that is correct. 2612

Q. Well, did you know the petition had been filed on April the 3rd? A. You asked me did I know it when?

Q. On April the 3rd. A. I say that I may have known it on April the 3rd. I may have known it on April the 5th. I don't recall what day.

Q. You don't remember when you spoke to Teddy and he told you that the petition had been filed? A. I don't remember if the call came in from Mr. Wishbow and that is the occasion that would set the date. If I knew actually when he called I would be able to tell you with definiteness what the date was.

I wanted to continue, Mr. Walsh. 2613

Q. Go ahead. A. And that this entire plan was predicated upon the consent of every creditor. This plan would fail—

Q. Now you are talking of May 13? A. I am talking of the whole thing, going back to March 25, the origin, and inception of this matter as outlined by the people who attended the meeting of creditors on March 25, and subsequently it was put into operation on May 13 by this letter that I referred to and by this registered notice to the creditors. Each creditor was required to consent to

2614 it. It was to the—it was within the discretion and the right of the attorney for the debtor to determine if he wanted to waive any particular creditors' insistence upon failure to give a release, and so, as far as we were concerned, we owed an obligation under the understanding—that is, the creditors' side of it—to obtain consents from each and every creditor. What would be the value of having a petition, as has been talked about so much—

Q. I don't know. A. What value would there be—

Q. Are you asking me? A. (continuing) About the dismissal of a petition without the consent—

Q. Are you asking me? A. No, Mr. Walsh. I am trying
2615 to reason with you. I am trying to point out to you what the facts are and I can do it in no other way.

Q. Will you just answer the question. A. Yes.

Q. I don't want to cut you off if you have an explanation to make to the jury; that is perfectly all right. I do not want to cut you off, but I do want you to answer the question, and the question is this: The petition that was filed on April the 3rd, Government's Exhibit 3 in evidence, was subsequently dismissed, wasn't it? A. It was.

Q. Now my question is this: Were any notices sent to creditors when that petition in bankruptcy, which was
2616 filed on April the 3rd, Government's Exhibit 3, was dismissed? A. It was not; no notices.

Q. There were no consents or no notices sent on that—A. No notices of pleadings, that is correct, of a procedural demurrable dismissal.

Q. In other words, there were no consents or notices sent to the creditors, is that correct? A. That is correct. It could just as well have been.

Q. Now that is an answer. I will take that. A. That is correct.

Q. There were no— A. No notices sent out to any creditors; not required under the law.

Q. The creditors did not know the petition was dismissed? A. You tell me the creditors did not know. That you presume. 2617

Q. No notices were sent out. A. All right; that is another thing. I will concede no notices were sent out, but I can't assume that the creditors did not know. Our client knew; these three other petitioning creditors knew, and other creditors probably knew.

Q. You heard Schwartz testify yesterday, didn't you? A. Yes, I heard him.

Q. He did not know even if the matter was still in bankruptcy. A. Well, I think that he has a poor conception of the distinction between bankruptcy and assignment. 2618

Q. I don't want you to explain it.

Mr. Walsh: I would like to have what he said Mr. Schwartz thinks stricken from the record.

The Court: Very well. I will strike it out because it is immaterial whether he heard Schwartz testify or not—on his cross-examination. I meant to say.

Q. Now we are coming back to that conversation between yourself, Mr. Goldman, Mr. Hoffman, and Wishbow out in the hall. A. On March the 25th. 2619

Q. On March the 25th. That was after you described briefly what transpired in the meeting, and then Wishbow and Hoffman went out and you subsequently joined them. That is a fact, is it not? A. That is right.

Q. Now if my memory serves me correctly—and you correct me if I am wrong—when you testified on direct you said something that there was going to be something about "two funds?" A. That is correct.

Q. Do you remember testifying so? A. That is correct.

Q. And do you take Mr. Schulman's explanation that one was going to be unofficial and one was going to be

2620 official? A. I don't take Mr. Schulman's explanation for anything. I don't need his explanation. Do you want me to give you my explanation?

Q. Of the two funds? A. Yes.

Q. You do say there was something mentioned about the two funds out there, is that correct? A. Whether the expression used was "two funds" or whether there the expression used was "there would be a fund for the creditors, general creditors, and a fund for the administration expenses" or not, I don't know, but the theme of the conversation was—

Q. Wait a second. May I ask you this: Were there
2621 "two funds" mentioned out in that meeting between yourself, Hoffman and Wishbow? A. You can use—I can only give you what took place, Mr. Walsh. I can't—

Q. I can understand what took place from what you said. Did you mention that on direct examination, "two funds?" A. Well, I may have mentioned it in describing it.

Q. Yes. A. Now you want to know whether that expression was actually used.

Q. No. Isn't that what you just testified to, right now, on direct examination? A. So far as—

Q. Did you or didn't you? A. Now, Mr. Walsh, I testified, and I can repeat my testimony only in sub-
2622 stance—I tell you that the tenor of the conversation—

Q. I am asking you one question, please. A. Yes.

Q. Did you or did you not on direct examination say or mention that there was a mention of "two funds", when you, Hoffman and Wishbow were talking out in the hall? A. Quite likely.

Q. Well, did you? A. Quite likely.

Q. Well, did you? A. Perfectly plausible.

Q. Never mind "perfectly plausible." Did you?

The Court: Mr. Goldman, answer yes or no, if you can do so: yes or no?

Q. And I will have it read back to you. 2623

The Witness: If your Honor pleases, will you read back the question and answer?

The Court: No. We are not going to do that. The question is: Did you on direct examination in this conversation say that there were "two funds"? Did you testify to that or not? If you don't remember, say so.

The Witness: I said in answer to that, your Honor, "quite likely."

The Court: Very well. That is sufficient.

The Witness: I said that before. 2624

The Court: You may proceed.

The Witness: I said "quite likely" and if Mr. Walsh will permit me to explain I will tell him that the tenor of the conversation—

Q. I only asked you that question.

The Court: Wait till he asks you another question. Proceed with the question, Mr. Walsh.

A. You are making a point of it, Mr. Walsh, and will you let me explain it?

Q. Go ahead and explain it. 2625

Mr. Walsh: Let him explain it, if your Honor please.

A. I will tell you what I told on my direct examination, that the conversation—

Q. Wait a second. Before you start on your whole direct examination, confine yourself to that one point, whether or not you said that there were "two funds;" briefly. A. That is correct. I said that there would be an answer to Mr. Hoffman's concern about his fee as

2626 assignee—as assignee's attorney, and Mr. Kolman's fee and compensation. I said to him that in every case—and in this case it will be—it will be proceeded with in the same manner, that when the assets are liquidated and the fund is obtained there must be a segregation of the fund, one to be used to pay in full—to pay in full priorities and administration expenses, and the other to pro rate on a percentage basis to all the general creditors. Now if that is your interpretation that I used the words "two funds" I am willing to stand by it.

Q. That is not my interpretation.

2627 The Court: Very well. Don't get into any argument. If you have any further explanation, go ahead. If not, Mr. Walsh, proceed with your questions.

A. Well, I did say "two funds." That is exactly the way I described it.

Q. That is what I have been trying to get from you for the past fifteen minutes. You did say "two funds," didn't you? A. Yes, that is right.

The Court: Very well, gentlemen. I believe that is a good point to take a recess.

2628 Recess until two-ten, if you can get back by then; if not, two-fifteen.

(Recess until 2:15 p. m.)

AFTERNOON SESSION.

MARTIN M. GOLDMAN, resumed the stand and further testified as follows:

Cross examination continued by Mr. Walsh:

Q. How long do you know him, Schulman? A. I guess I came in contact with him in the law practice some years ago.

Q. Some years ago? A. Anywheres from five to seven years, probably. 2629

Q. That brings it down to 1933. A. It may bring it down a little further than that; probably 1934 or 1935.

Q. And you have been associated with him in the practice of law, you said? A. No.

Q. I mean not as a partner; associated in cases with him? A. I doubt it. We may have come in contact in cases where he represented creditors and we did. In most instances, as I recall, he was on the other side.

Q. In any event you have been in many proceedings with him where you represented some people and he represented others? A. I would say few. 2630

Q. How long have you known Mr. Kandell? A. To go back, 1935 or 1936.

Q. And do you know Louis Abramson? A. No.

Q. Had you ever met him before he appeared here in court here today? A. When he appeared here in court it sort of brought to my mind that I may have seen him on occasions; met him in one matter or two matters at the outside. I don't think I ever had any business with him.

Q. Do you remember whether he was one of the buyers in any matter you were interested in? A. I don't recall.

Q. Were you asked on any occasion before the grand jury whether or not you ever knew Louis Abramson? A. 2631 Yes, sir, I was.

Q. And what did you answer, do you remember? A. I think if you will give me the question and answer I will be able to refresh my recollection.

Q. You said you had? A. Yes, but I don't recall the question or the answer.

Q. "Did you know Louis Abramson?" and you said, "Yes." A. I beg your pardon.

Q. The question was whether or not you knew Louis Abramson, and you also testified to the grand jury you

2632 did. A. I don't think I ever conveyed that impression here or in the grand jury that I knew him. My—

Q. Well, as a matter of fact— A. Pardon me. May I finish it?

Q. Surely. A. My impression up to the time he appeared in court, if I saw him I would not know him, and when he came here and sat here, it came to my mind probably I did, but I never had any business dealings with him.

Q. Have you ever had any business dealings with Kandell? A. Yes, sir.

Q. Have you represented him or his clients on any occasion? A. Yes, sir.

2633 Q. Is he one who usually gets a buyer, Mr. Kandell? A. I don't know anything about that.

Q. You don't know anything about that? A. No.

Q. Did you see Mr. Schulman, or did you communicate with Mr. Schulman, between April 5th, the date when the argument was before Judge Coxe, and April 7th when you went over to his office? A. No, sir.

Q. Now will you tell us once more what Mr. Schulman told you when he called you up on the afternoon of April 7, 1937? A. He told me Mr. Hoffman was at his office, that they had been before Judge Coxe in connection with the motion made by Mr. Hoffman to vacate an order of

2634 stay staying the sale that was scheduled for April 5th, and that after argument on the motion Judge Coxe denied the motion to vacate the stay, and then they told me that Judge Coxe suggested they get together, and asked me if I would not come over.

Q. You were not interested in the matter? A. I was interested in the matter,—my firm was.

Q. You didn't go over there? A. I didn't go over there until he told me some additional things. I told him, when he finished with that part of the conversation, I told him my brother was handling the matter and he would

have to take care of it. Then he told me Mr. Hoffman made 2635
some comments; some slurring remarks about me to Judge Coxe.

Q. Did he tell you that over the telephone? A. He told me, Mr. Hoffman said I instituted the petition in bankruptcy, and that the only thing, about filling the petition in bankruptcy, that we wanted to get into the case, and I attempted to break into the case.

Q. That is what Mr. Schulman told you? A. Yes, sir, that is correct.

Q. And then you went over to the office? A. That is correct.

Q. You knew, did you not, before you went over to the 2636
office that Mr. Hoffman had excited you, as you put it, because he said you were trying to break into the case, prior to the time you went over to the office? A. Yes, sir.

Q. Who told you that? A. Mr. Schulman.

Q. Do you refer now to the telephone call? A. That is correct.

Q. Did you know it prior to the time that you heard from Mr. Schulman on April 7th? A. I did not.

Q. Didn't you have a telephone call with Mr. Wishbow, and didn't Mr. Wishbow tell you that Mr. Hoffman was going to make an application to the Court to dismiss the petition and also relate to the Court, as you termed it— 2637
what did you say about getting into the picture? A. Breaking into the picture.

Q. Didn't Mr. Wishbow tell you that when he called you up? A. No; my recollection of that conversation was Mr. Wishbow tried to get me to inject myself into it, so that he could get along with the sale.

Q. To have you use your good graces about having the petition dismissed so he could get his fee as an auctioneer? A. So that he could conduct the sale.

Q. Did he relate anything to you about throwing $10 to the creditors? A. At this telephone conversation?

2638 Q. No; did Mr. Wishbow tell you and remind you that you had stated to Wishbow and Hoffman that you would take care of these creditors by throwing them a $10 bill? Did he say that to you? A. No.

Q. Did you tell Mr. Wishbow on that occasion that he lied? A. No, sir.

Q. Will you tell me once more what was the conversation you had with Mr. Wishbow when you say it was April 5th and Mr. Wishbow said it was Saturday, April 3rd? A. I said it was either April 3rd or 5th.

Q. Is your memory refreshed now as to when it was? A. No.

2639 Q. Tell us the conversation please once more. A. The substance of the conversation was that he was endeavoring as nearly as he could—

Q. Will you repeat what Mr. Wishbow told you and what you told Mr. Wishbow? A. Mr. Wishbow started the conversation by asking me, in connection with the petition in bankruptcy, asking me what was the idea. I said, "Just wait a minute. I don't know anything at all about a petition in bankruptcy."

Q. Then what did you do? A. I called over my brother and asked my brother about it and he told me about the petition in bankruptcy, and it was then Wishbow said to 2640 me, "I want to go ahead with the sale, it is already scheduled for Monday, and cannot we compromise this matter?" That seems to be the language he used—"Can not we get together on this?"

I said, "Schulman being the attorney for the petitioning creditors, you take it up with him." I think I commented that Teddy was handling the matter, and "take it up with him."

Q. Did you know at that time when you were having this conversation that an order had been granted by one

of the judges of this Court staying the sale? A. Wishbow told me that. 2641

Q. That was not served on them until Monday, the time of the sale? A. That is correct.

Q. You said you also obtained an order staying the sale? A. If it was April 3rd, it could not have been. Let me just review this.

Q. Just a moment. Give me those exhibits.

(Handed to Mr. Walsh.)

Q. I show you Government's Exhibit 3 in evidence, which is the involuntary petition in bankruptcy, and also the petition and order, and ask you whether or not that refreshes your recollection as to when you had a conversation with 2642
Mr. Wishbow. A. No, neither paper refreshes my recollection.

Q. The order was also granted on April 3rd, was it not? A. That is correct.

Q. And did Teddy tell you anything also about an order having been obtained to stay the sale as of April 5th? A. He may or may not.

Q. You don't remember that? A. No; but Wishbow, knowing a petition had been filed, that his sale could not go forward unless the petitioning creditors, the attorney, wanted to have it done, they could stay the sale by mere 2643
service of a notice that the petition had been filed, or by obtaining an order of stay.

Q. That is what they did, by obtaining an order of stay? A. That is correct.

Q. When did you first find out that Mr. Schulman was the attorney and had filed a petition in involuntary bankruptcy? A. When I received this telephone call from Mr. Wishbow and asked my brother about it.

Q. Did you at that time ask him if he had a copy of the petition? A. No.

Q. Did you look at the petition? A. No, not until recently.

2644 Q. When? A. When we had these conferences at Mr. Corbin's office.

Q. And was that the time you found out that the name Goldman, Malter & Goldman had been erased? A. It came about this way: When these conferences took place we were trying to find out what actually happened, and the various persons told us what they had done in the matter, and there seemed to be a conflict on some of the facts, and it developed Mr. Schulman had stated that the petition in bankruptcy was prepared in our office. It was then that a copy of the petition was obtained, and then Teddy made some inquiry about it. He was still not sure that he
2645 prepared the petition or that the petition was prepared in the office. I think he looked at the petition and went back to the office and made some inquiry about it, and I think afterwards he conceded that the petition in bankruptcy was prepared in the office.

Q. Wasn't it the fact you stated this petition was prepared in your office when you knew the government had the information that the name Goldman, Malter & Goldman had been erased and the name Schulman put on? A. We didn't know. We were trying to find out. I was asked that question in the grand jury room when I appeared before the grand jury voluntarily. That erasure may have
2646 been one of the elements that entered into his determination that the petition was prepared in the office.

Q. Was that the first time that you had ever conferred in this case with your brother? A. No; I conferred with him in 1938 when I went to the grand jury.

Q. Did you confer with your brother when you appeared before the last grand jury? A. I did.

Q. And did you also confer with Mr. Schulman before you appeared before the first grand jury? A. No.

Q. Or the last grand jury? A. I did not.

Q. You are absolutely sure of that? A. That is correct. 264

Q. There is no question about that? A. There is not any question about it. Now, Mr. Walsh—

Q. I didn't ask you a question. Do you want to volunteer something? A. No. You asked me the last question—

Q. I thought you answered it. A. You asked me about conferring with him. I may have called Schulman and asked him some questions about the case. I may have telephoned or gone over. Now I am not definitely certain about that.

Q. Is there anything else you would like to add? A. 2648
No.

Q. Did you ever go over with Teddy, your brother, and confer with him? A. What time?

Q. Before you appeared before the last grand jury. A. Are you talking about the January, 1940 grand jury?

Q. Yes. A. It may be possible, but I doubt it.

Q. I don't know. A. I am not sure.

Q. You would not deny you had? A. I cannot deny or admit it, because I don't remember.

Q. Now, when you got over to Schulman's office, Hoffman was there, was he not? A. You are referring to April 2649
7th?

Q. April 7th. A. Yes, sir.

Q. What was it you said on that occasion when you first saw Mr. Hoffman? A. I asked him to tell me what Hoffman had said before Judge Coxe. I asked him to tell me in what respect I had done anything in this matter that justified him in making any comment to Judge Coxe. I asked him further what right he had to go over to Judge Coxe and make comments in my absence; I told him common courtesy certainly deserved that notice should have been given to me, or his advising me that he was about

2650 to go before Judge Coxe and make statements concerning me. I was very much concerned about the fact, and naturally I resented it, and we got into an argument about it.

Q. Well, did he tell you on that occasion what he had stated before Judge Coxe? A. He did.

Q. And did he tell you what he did on the stand? A. He did not.

Q. He did not? A. No, sir.

Q. Nothing like it? A. No, sir.

Q. Then why did you get sore? A. Because he said I tried to break into his case, we filed a petition because of that, that I instigated the petition. I couldn't remem-

2651 ber exactly—he used some language, "try to break in."

Q. Did he use the word "chisel"? A. He may have used that; he may have used some other word.

Q. And how long would you say this conversation took place on April the 7th at Schulman's office? A. I haven't any idea.

Q. Well, would you say it was ten minutes? A. I haven't any idea. I haven't any idea whether it took ten minutes or thirty minutes. I haven't the slightest conception of length of time.

Q. Well, it wasn't one minute? A. Oh, it was more than one minute.

2652 Q. Give me an approximation. A. I can't give you anything near there—I couldn't possibly remember the length of time. I know I was there a short period. That is my impression.

Q. Was it 15 minutes? A. It may have been 15 minutes; it may have been a little longer.

Q. Well, was it 20 minutes? A. I can't tell.

Q. Well, is that your best recollection? A. It is.

Q. That it was longer than 15 minutes? A. I haven't any idea whether it was 15 minutes or a half-hour, but my impression has always been—

Q. In any event, it was longer than 15 minutes. Is that your best recollection at the present time? A. No. My reaction to that particular conference at Schulman's office was that it was a short period. I came in there, had some argument with him— 2653

Q. I don't mean now how long you were in Schulman's office. I am asking you now how long was the conversation between you and Hoffman when Hoffman was telling you what he said before Judge Coxe and when you were making comments to Mr. Hoffman. That is the question. Did you understand me? A. Oh, I don't know whether that took more than just a few minutes.

Q. How many minutes? A. Oh, I don't know. I can't possibly conceive—I doubt whether it took more than five minutes. 2654

Q. Did you misunderstand my question before? A. I did. I thought you mean the sum total of time expended.

Q. No. I am referring specifically to the acrimonious discussion, we might term it, between yourself and Mr. Hoffman in the office of Mr. Schulman. A. I doubt whether it took more than a few minutes.

Q. Well, how many is a few minutes? A. Well, I would say anything less than five minutes.

Q. It wasn't more than five minutes? A. Oh, I am positive of that. 2655

Q. About four minutes? A. Well, I wouldn't say.

Q. Well, you were there; I wasn't, Mr. Goldman. That is the reason I am asking you these questions. Can you approximate it at this time? A. I wish I could tell you. I absolutely can't possibly tell.

Q. Did you discuss that with Mr. Schulman when you had the conference? A. Oh no; that was unimportant.

Q. That was unimportant? A. That was of no consequence.

Q. You only discussed the important phases of it? A.

2656 We discussed the facts of the matter and what developed and we had learned what had been done here that was allegedly complained about, we were trying to get all the facts together.

Mr. Walsh: I move that it be stricken out.

The Court: I will overrule the motion to strike out and I will direct the witness now to give a direct answer to any question that may be put, and for any reasonable explanation that he recalls as to what actually happened, without his conclusions. He may give in full his best recollection of what happened or what was said.

2657

Q. Now I show you Defendants' Exhibit F, Mr. Goldman and ask you whether or not you have ever seen that before. A. I have.

Q. Where? A. I saw that—I surely saw that at the conference at Mr. Corbin's office. Of that I am certain.

Q. There is no question of that fact? A. I don't think there is any question about that.

Q. That was gone over? A. Yes.

Q. And Kandell was there at that time? A. That is correct.

2658 Q. From whom did you receive it? A. Oh, it was on the table. I don't know. I didn't receive it. I knew it was there. It was part of the papers that were gone over by the attorneys and the defendants.

Q. Do you know where you got it? A. No, I haven't any idea.

Q. Well, had you ever seen that paper prior to the time that you had this conference in Mr. Corbin's office? A. Oh yes, I did.

Q. When? A. I must have seen this paper away back in 1938 when I went over to the grand jury.

Q. As a matter of fact, you had that paper with you in 2659
1938? A. Yes.

Q. When you did appear before the grand jury? A. That is correct. I may have had it with me, as I had it away back as far as 1938.

Q. There is no question about that fact, is there? A. Well, I think it is quite likely that I did have it.

Q. To whom did that paper belong, and where did you get it? A. Well, my recollection is that that paper was in our file, or I had asked Kandell to send his file down before I went to the jury.

Q. That was in 1938? A. That is correct.

Q. And did you have any other file of Mr. Kandell? A. 2660
Oh yes, I had his entire file.

Q. And you received the file after April 25, 1938? A. That is right.

Q. That was after he was arrested? A. That is correct.

Q. Did you ask for the file or did he send it over to you voluntarily? A. I asked for it.

Q. When? A. Well, soon after I heard of his arrest and soon—

Q. Let me get this straight. Shortly after his arrest you then communicated with him and he sent this file over, of which Defendants' Exhibit F in evidence was one of the 2661
papers? A. Those—that paper there?

Q. Yes. A. That may have been in our file. I don't recall.

Q. Well, you just testified, did you not, sir, that that was Kandell's memorandum? A. No, that was Kandell's memorandum originally made. Now it may have been taken over by my file when I brought the file back to the office, when I had gone up on the matter.

Q. Gone to where? A. On the meeting of March 25.

Q. You mean to say you took this back on March 25? A. I may have. I don't recall. I know that I had that paper in 1938.

2662 Q. Well, isn't it a fact that you heard Mr. Kandell testify on the stand this morning that some of the notations on that paper are Mr. Cohen's, that are made after March the 25th? A. That is right.

Q. So you didn't get it on the 25th of March? A. That may be quite possible. I say I do not recall.

Q. I only said that you did not get it on the 25th. A. I don't know.

Q. Well, did Mr. Cohen come up to your office to make these notations? A. Mr. Cohen was present at this meeting on March 25 and it is my recollection that Cohen made those notations of the telephone numbers before that meet-
2663 ing broke up, to get the telephone numbers of the various creditors so as to know where to contact them when he needed them.

Q. But subsequently, Mr. Kandell did give you other papers—we will forget this paper, Defendants' Exhibit F, for the time being—you did receive other papers from Mr. Kandell? A. That's right.

Q. There is no question about that fact? A. I don't think there is any doubt about that.

Q. And you didn't take that from the meeting, the papers you subsequently got, is that right? A. Yes.

Q. Are you sure about that? A. I am certain of that.

2664 Q. And they were from the file of Mr. Kandell? A. That is correct.

Q. And that was after April 25, 1938, when he was arrested? A. That is correct.

Q. And when he was asked to bring the file up to the United States Attorney's office? A. I don't know anything about that.

Q. I see. Did you know Mr. A. Rothlein? A. Yes, I know him.

Q. Do you know him? A. Yes, I do.

Q. When you asked Mr. Kandell for the file did he tell

you that the Government had also requested it prior to your request? A. No, I don't recall that. 2665

Q. You don't recall that? A. No.

Q. You don't remember, in other words? A. No, sir.

Q. Did you ask Mr. Kandell what the Government had asked him when he was arrested? A. No, I don't believe I did.

Q. You didn't know anything about it at that time, did you? A. No. I asked—here's how it happened: Mr. Cohen contacted my office and told me about the fact that Kandell was arrested in connection with the Hymowitz matter, and it was then that I asked him about it and he gave me the facts as to what had developed that day. He 2666 told me that the merchandise creditors who attended the meeting were down there and they were there all day.

Q. Are you finished? A. (No response.)

Q. I show you Government's Exhibit 15 in evidence, and ask you whether or not you recognize the enclosures of those papers (handing witness). A. Yes. One is the letter of May 13, 1937, on the—

Q. Well, just tell us generally. Is that the notice that was sent out to all the creditors in which it was stated that a purchaser was obtained, Mr. Rothlein, and that there was going to be a sale on a specific date? A. These are the papers that I referred to earlier in the testimony, which 2667 were sent by registered mail.

Q. I understand that. A. On May 13.

Q. Have I described it accurately? A. That is correct.

Q. Thank you. A. One is a letter addressed to the creditors giving them the facts in the matter. The other paper is a Bulk Sale notice, and the third paper is a consent to vacate the assignment.

Q. Did you prepare these papers? A. I did not.

Q. Did Teddy prepare them? A. Yes, he did.

Q. In your office? A. That is correct.

Q. And did he know that A. Rothlein was the purchaser

2668 when he prepared this paper dated May 13, 1937? A. He did not.

Q. He did not? A. No, sir.

Q. Well, where did A. Rothlein come from? A. That A. Rothlein—he sent those papers up in blank.

Q. In blank to whom? A. To Mr. Kandell's office.

Q. Who sent them up? A. Kandell.

Q. Did you know he was sending them up? A. I know it now.

Q. You did not know it then? A. No. I had no contact with the matter.

Q. You are out of the picture now? A. That is correct.

2669 I have been out of the picture from April 7, after I left Schulman's office.

Q. You knew what was going on? A. I doubt it. Maybe in a very casual way. It was a wholly unimportant matter. It was one out of hundreds of cases.

Q. Didn't you confer with Teddy, your brother? A. No.

Q. Concerning the various legal steps that were going to be taken? A. No, I did not.

Q. Where did you get—you say that this name "A. Rothlein" was not on the papers that were sent to Kandell? A. That is true.

2670 Q. And this is— A. And you will find—

Q. And this is dated May 13. Is that the date that it was sent out by registered mail? A. That is correct. As I understand it, that was sent out by hand to Mr. Kandell's office that day.

Q. Where did you find out that the name "A. Rothlein" had been inserted in that notice of sale? A. I don't understand the question.

Q. I will withdraw the question. In this letter that was sent out re Paul Hymowitz, dated May 13th, is a notice that "The undersigned will purchase all the mer-

chandise and all liens in and against the same for the sum of $1500 in cash." And signed "A. Rothlein." Is that correct? A. That's correct. That Bulk Sale notice so says. 2671

Q. Yes. That was dated May 13? A. That is correct.

Q. Now I show you Government's Exhibit 14, which is dated May the 19th: "We are also enclosing herewith a bill of sale of Paul Hymowitz to A. Rothlein," which is addressed to Robert Hoffman, and enclosing a bill of sale to A. Rothlein; a letter addressed to Goldman, Malter & Goldman in connection with the distribution of moneys, "Received from the sale of the assets and from the City of New York. Please be good enough to return these instruments as soon as they are executed by Mr. Hymowitz." 2672

Well, the sale—the notice of the sale to Mr. Rothlein had been sent out to all the creditors on May the 13th; that is correct, isn't it? A. That is right.

Q. And then on May the 19th you asked Mr. Hoffman to have this bill of sale of Rothlein executed; is that correct? A. That is correct. You mean my office did, when you say "you"?

Q. Well, you or your office; it doesn't make any difference. A. All right.

Q. So where did you find out about Rothlein, whether you or your office? A. The name of Rothlein came to my office either in one way or another. 2673

Q. Well, I know that. A. Either Mr. Kandell or Mr. Cohen.

Q. You didn't take it out of the air, I know that.

Mr. Corbin: I object to the continual interrupting of the answer.

Mr. Walsh: It is not continual; I will admit perhaps I did interrupt.

The Court: I will sustain the objection and allow him to answer the question. I will let him explain it.

2674 A. It came to us by telephone call from Mr. Cohen or Mr. Kandell, telling us that Rothlein is the purchaser, or when this Bulk Sale notice was sent out on May 13th and came to us on the following day, the name "A. Rothlein" appeared on the bottom of the notice, the same notice that went to all creditors, and you will find that on May 19th, six days later or five days later, the bill of sale was prepared with A. Rothlein as the purchaser, and that bill of sale was sent up to Mr. Robert Hoffman for execution by his client.

Q. So your office received the notice on May the 13th by registered mail and that is the first time you found out
2675 that A. Rothlein was supposed to be the purchaser? A. We wouldn't receive it by registered mail. That notice was sent out to all creditors by registered mail, but as I say—

Q. As a matter of fact, you compared it, didn't you? A. We did.

Q. With "A. Rothlein" out, you say? A. That is correct; in blank.

Q. Now you say either Cohen or Kandell put the name "A. Rothlein" in it? A. That is correct.

Q. Was the Underwriters Salvage Company ever used? A. In this matter?

2676 Q. That is what we are talking about. A. No; not that I know of.

Q. Do you remember when Mr. Schulman was on the stand I asked him certain questions as to what your function was going to be and will you say whether or not it was or was not—and so that I will not misquote I will be bold enough to read you what he said.

Mr. Corbin: I object to it as immaterial.

The Court: Yes. I will sustain the objection.

Q. Well, were you going to work out the mechanics of

this particular situation? A. No. My brother Teddy was 2677
to handle it.

Q. Your brother Teddy was to handle the mechanics? A. That's correct.

Q. Did you discuss that with Mr. Schulman and Teddy at the conference? A. What conference?

Q. Who was supposed to say they were going to work the mechanics? A. You mean in the conference at Mr. Schulman's office?

Q. Yes. A. At Mr. Corbin's office or Mr. Schulman's office?

Q. At Mr. Corbin's office. A. You are talking about this conference here about a month ago? 2678

Q. Yes. A. What is the question?

Q. Did you at that time decide—well, I will withdraw the question. Going back, Mr. Goldman: There has been introduced in evidence a letter dated April the 1st in which you asked your client to sign a claim against the estate. Do you remember that? A. I remember it.

Q. That was introduced through Mr. Teddy Goldman? A. Yes, I saw that letter at this conference and I saw it before.

Q. Had you ever communicated or did you ever know that Mr. Schulman had communicated with the office, yourself and your brother prior to April the 2nd, 1937? A. 2679
From what I learned, he did not.

Q. Well, do you remember this question being asked you in the grand jury on January the 29th, 1940—

Mr. Corbin: What page?

Mr. Walsh: Page 187.

Q. I am going to read you a little so that you will get the context and then you will be able to follow more clearly:

"April 1 we sent a proof of claim to our client, Mr.

2680 Levy, and asked him to execute it and return it. The form of the proof of claim was a short form proof of debt which it was necessary to have signed and executed under oath, with a statement and filed with the assignee. That was April 2—that was Thursday."

Mr. Walsh: May I see that exhibit?

Mr. Corbin: If we find it.

Q. Well, in any event—

Mr. Corbin: Anything we have here you can have.

Mr. Walsh: I understand, Mr. Corbin.

2681

Q. In any event, your client did not execute that under oath; do you remember that? A. I don't know. I will tell you, Mr. Walsh—

Mr. Corbin: Is this it (handing to Mr. Walsh)?

A. (Continued) If you will look at the file in the assignment proceedings you will find in all probability our claim on file and you will find the date of its execution.

Q. Well, I will withdraw the question. It isn't important. I just wanted to refresh your recollection. Do you think it is important?

2682

Mr. Corbin: I think it is important to have everything that is available.

Mr. Walsh: We understand that.

Mr. Corbin: Either court records or in our files.

The Court: Very well. He has withdrawn the question so, gentlemen, proceed.

Mr. Walsh: I have withdrawn the question because it is of no importance. I don't accuse you, Mr. Corbin, of holding anything back, and never have accused you.

Q. And then it goes on—I just read it to help you refresh your recollection for whatever importance it was— "Q. What happened next?" And before I ask you the question, did you hear your brother testify yesterday? A. I did. 2683

Q. To the effect that he had not communicated with Mr. Schulman prior to April the 2nd, 1937? A. I did.

Q. Was this question asked you and did you make this answer:

"Q. What happened next? A. April 2nd we received a telephone call from Mr. Schulman, a lawyer, who had been calling the office during the week about the fact that some of these creditors that had attended the meeting had had difficulty in getting to the place." 2684

Do you remember that question being asked you— A. I did.

Q. (Continued) And do you remember making that answer? A. Yes, sir.

Q. And had Mr. Schulman been calling the office prior to April 2nd? A. That was my impression at the time.

Q. And I want you to listen to the next question too: "Q. Did you have this conversation with Mr. Schulman? A. No, but I know that took place." A. That is correct.

Q. I want to be fair and read that too. A. Yes.

Mr. Corbin: Just so much, Judge; whether he wants to be fair, I move to strike that remark. 2685

The Court: Yes. I will sustain the motion.

Q. Were you asked that question and did you make that answer? A. What question was that? Are you talking about the first or second?

Q. "Q. Did you have this conversation with Mr. Schulman? A. No, but I know that took place." A. Yes, that's a correct answer.

Q. How did you know it took place? A. Well, I say I

2686 was under the impression that he had called in connection with the failure of Hoffman to contact creditors.

Q. Who told you it took place? A. Well, I assume I got that information somewhere. I don't know specifically where.

Q. Well, your brother Teddy was in charge of the matter, you said? A. That is correct.

Q. Would it be he who told you that Mr. Schulman had been calling up? A. That is correct. It is quite likely, Mr. Walsh, that from the period of time I left that meeting on March 25 and the time that these creditors were to look at this stock, and have their respective purchasers, that
2687 during the intervening few days that probably three or four days up to and including April 2 that we are referring to, that Teddy may have mentioned to me, quite likely, and it is quite likely not because I haven't any definite recollection about it, because it is an unimportant detail as far as this matter or general matters are concerned. He may have mentioned the fact that there was difficulty. That was when I went before the grand jury and I told them what was my impression. You must remember that when we got together with this conference we had all the defendants there and we tried to find out what the actual
2688 facts were.

Q. Well, this was prior to the conference with Mr. Corbin. That was— A. Yes. That was in January, 1940. where—

Q. That is the time you had conferred with your brother before you appeared before the grand jury? A. Oh yes. I talked the matter with him.

Q. Did you discuss the matter fully with your brother before you went to the grand jury in January of this year? A. As fully as we could, consistent with the fact that the other people were not talked to, as I then—

Q. What other people were not talked to? A. I am

talking about Mr. Kandell; I am talking about Mr. Schulman. 2689

Q. That is the reason I asked you the question before: Had you conferred with Mr. Schulman prior to the time that you appeared before the grand jury? A. When you say "confer" I may have telephoned him; I may have come to his office.

Q. Well, did you speak to him? A. I haven't any recollection in that respect.

Q. Did you speak with Mr. Kandell? A. Maybe and maybe not.

Q. Well, you got the file from Mr. Kandell, did you not? A. In 1938. 2690

Q. Didn't you have the file with you all the time? A. The 1938?

Q. Yes. A. I may have returned it and we may have kept it in the office. I don't recall.

Q. Well, you have it now, don't you? A. His file? No. I think Mr. Mintzer has it.

Q. But it was down there at the conference. Who brought that down there? A. Mr. Mintzer. I don't know what he brought. He brought with him his own file.

Q. When did you return the file to Mr. Kandell after 1938? A. I haven't any definite remembrance on that question. I don't recall that. He may have called for the file and it may have been returned to him by somebody in the office in authority. 2691

Q. Who is in the office "in authority"? A. Mr. Malter, my brother, the managing attorney, my secretary. They would—almost anyone of them usually would know whether they could give up a particular paper that is in the office.

Q. May I ask you again, did you confer with Mr. Kandell prior to the time that you appeared before the grand jury in January of 1940? A. When you refer to a conference such as took place at Mr. Corbin's office, I say, "No." I

2692 may have telephoned him and asked him some questions. I may have sent for him.

Q. Did you speak to him concerning the Hymowitz case prior to the time that you appeared before the grand jury in January, 1940? A. I say I may and I may not.

Q. You don't remember at this time, is that your answer? A. That is correct.

Q. Did you speak to Mr. Schulman or telephone him or talk to him over the telephone prior to the time that you appeared before the grand jury in this case concerning the Hymowitz case? A. I may have called him and I may not.

Q. You have no present recollection? A. That is correct.

2693 Q. And you cannot remember at all now, is that correct? A. No, sir; that is correct.

Q. Did you confer with your brother Teddy Goldman? A. I did.

Q. Before you appeared before the grand jury? A. I did. I conferred with him at length. We went over the matter in great detail.

Q. You remember that you sued Mr. Hoffman for one-third of the $300 that he had been given as his work in the assignment proceedings; is that correct? A. My firm brought on a proceeding in the assignment proceedings—

Q. Well, who authorized it in your firm? Who is the 2694 senior partner? A. Well, Mr. Malter and I are on an equal standard.

Q. Well, in this matter who is the senior partner? Malter had nothing to do with this, did he? A. As far as handling the matter before the referee, yes, he did.

Q. I understand that, but did you authorize the suit for one-half of $300? A. Mr. Malter was writing letters to Mr. Hoffman in the vein of "Dear Bob."

Q. I asked you whether you authorized the institution of a suit to obtain one-half of the fee that had been allowed by the Court to Hoffman. A. I think we discussed it in the office and we agreed to do that.

Q. Who is "we." A. Mr. Malter, my brother Teddy and myself. 2695

Q. And you did institute such a suit? A. We brought a proceeding—a summary proceeding in the assignment proceeding and when the matter came up—

Q. And your brother testified there, did he not? A. Yes, sir.

Q. Under oath? A. He did.

Q. And after he came back did he tell you what he testified to? A. Yes.

Q. Did he tell you that he denied that he had seen the petition in bankruptcy? A. No, he didn't tell me any of the details. He just had— 2696

Q. Well, I asked you what he did tell you. A. What he told me was that Hoffman had opposed the motion, had taken a position that we—

Q. Wait a second. I asked you a question.

Mr. Corbin: Let him answer.

A. Don't you want me to tell you what he told me?

Q. Did Teddy testify? A. He did.

Q. And did he tell you that he had testified that he had not seen the petition that was filed in the Hymowitz case? A. I don't recall that. 2697

Q. You don't recall that? A. No. I don't think that was in the—

Mr. Corbin: Just a moment.

The Witness: Do you want me to tell you what he told me?

The Court: Your lawyer said, "Just a moment."

The Witness: I am sorry.

Mr. Corbin: I was going to object on the ground that that is not the testimony and that it is not confirmed by the transcript that Government counsel read from.

2698 The Court: I will sustain the objection.

Q. Did you have a conference with your brother after he appeared and testified at the first hearing before Referee Marks? A. No. I think we had—I think that there was another meeting or an adjournment and then Mr. Malter, my brother and I discussed the matter and determined that in view of the fact that Mr. Hoffman had apparently a good technical objection to our application in that our co-retainer stipulation was signed on June the 1st, 1937, that we would not be entitled to any compensation for services rendered by our office prior to that day, and in view of the
2699 fact that all of the work done by your office was before that day, and I don't think—I think little, if any, work was done after that day, he apparently had a good technical objection, and in addition to that and more important than that reason was the fact that the matter was taking up so much time already—I think they had spent several hours there before the referee or were required to come back on some adjourned date—they had to go back and spend some more time, and it meant if we were thoroughly successful we would get 150, and it did not look as though we would get 150 in view of his apparent valid objection, and there was uncertainty how much we would receive and maybe receive
2700 little, if anything, so we decided to abandon that proceeding for expediency, and so it was not good business to waste any further time, to waste time on what was possibly a loss of a lawsuit in trying to reclaim this money which we were entitled to and which we were allowed by order of the Court.

Q. Is there anything else? A. That's all.

Mr. Corbin: About what?

Mr. Walsh: That he wants to explain.

Mr. Corbin: Now just a moment.

A. I answered. 2701

The Court: Very well, gentlemen. Proceed with the next question. He has answered the question. You asked him what his brother Teddy told him and he told you, so proceed.

Q. When was the retainer signed, did you say? A. The retainer was signed, if my memory serves me well, on May 15, 1937, but it wasn't filed till June 1, 1937.

Q. Well, didn't you know even before you instituted this suit that Hoffman had the same technical objection, as you call it? A. Frankly, we didn't expect him to take advantage 2702
of us in that respect.

Q. As a matter of fact, isn't the reason that you discontinued that action and signed or had the stipulation appear on the record was because you were afraid that Mr. Hoffman would take the stand and testify as he had in this court? Isn't that the reason that you discontinued that action? A. No, absolutely not, and if you will refer to the record in the assignment proceedings you will find a statement that was made before the referee, is in substance, I think, what I told you today.

Q. Wasn't the case discontinued during the course of the cross examination of Teddy Goldman? A. It was not. 2703

Q. It was not? A. Let's have the record.

(Handed to the witness by Mr. Walsh.)

Mr. Walsh: I am handing him the stenographic minutes before Referee Marks.

The Court: Gentlemen, I think we are getting rather far afield from this case. I am not going to try that case that was tried before Referee Marks.

Mr. Walsh: Well, I will withdraw the question then.

The Witness: May I—

2704 The Court: I will say this: This part of it would be competent if such a thing happened: If there were any statements made by anybody contrary to what has been testified on the stand by any witness who testified in that case, those contrary statements would be admissible; but as to what was generally done there I do not think has any connection with this case.

The Witness: Will your Honor permit me to—

The Court: Yes. I will permit you to go briefly—either side.

2705 Q. May I have my question answered first, whether or not the hearing was adjourned at that time during the cross examination of Teddy Goldman? A. It was not.

Mr. Corbin: The question is irrelevant and immaterial.

A. It was not. Now let me read this to you. This is the record, Mr. Walsh.

Q. Well, just look at the last part. Who is on the stand when it was adjourned?

The Court: Just a moment. An objection was
2706 made there. Let me see what I want to rule on that objection.

Q. You say he was not? A. Refer—

The Court: Just a minute.

The Witness: I am sorry, your Honor.

The Court: He has said that it was not. That was in before the objection, at least before it was registered. I am going to sustain the objection to that.

Mr. Walsh: Will you hear me on that for a mo- 2707
ment, if your Honor please?

The Court: No, I don't care to hear you on that, Mr. Walsh. It is going also into the trial of that case. That is as far as I am going to permit that case to come into this one. If any witness—I don't care who you are—for either side—made a statement in the case contrary to what his testimony is on the present witness stand, then you can introduce that part for the purpose of contradicting the witness. I don't care what was the outcome of that lawsuit down there, or when it was terminated or why it 2708
was terminated. We are not going to try it here as a reviewing court or any other court. The rule is if a witness makes a statement different on another occasion, he may be contradicted by it. That is as far as I am going to permit you to go into that record.

Q. Mr. Goldman, if you had merely represented Mr. Harry Levy as a creditor in this proceeding, without becoming co-attorney, would you have received a fee? A. In what proceeding? You are talking about the vacatur of the assignment?

Q. In the estate. You represented the creditor Harry 2709
Levy and submitted his claim. Would you have received a fee from the estate? A. In the vacatur of the assignment, whatever the services were rendered in connection with it, we would be entitled to a fee.

Q. That is because you were in there as co-attorney? A. No, sir; because of the fact that we were performing services generally beneficial to the creditors, and the Appellate Division in the Second Department determined that question, that where an attorney doesn't represent—

Mr. Walsh: I object to what an attorney may—

The Court: I will sustain the objection and ex-

2710 clude that part as to what the Appellate Division did. I will let his answer remain that he would have been entitled to a fee.

Q. Now you say you discussed this situation; before you appeared before the grand jury in January of 1940, with your brother? A. I did.

Q. Did you discuss with him whether or not the petition in bankruptcy had been filed or had been prepared and drawn up in your office? A. I did.

Q. You did? A. I did.

Q. Before you appeared? A. That's correct.

2711 Mr. Walsh: That is all.

Redirect examination by Mr. Corbin:

Q. And did Teddy tell you at that time or say that it had not been prepared in your office? A. He was certain about it at that time.

Q. Did you ever hear that anyone had made or received any bid in the sum of $1900 for the Hymowitz stock? A. I never did.

Q. Did you ever hear of anyone having received any bona fide offer of $1900? A. I never did.

2712 Q. Reference was made on cross examination to "two funds". Was there anything said at any time in your presence or hearing about two prices being received for the stock—

Mr. Walsh: I object to the form of that question.

The Court: I sustain the objection, not upon the ground as to form, but upon the ground that it has already been gone into on direct examination. You went into that this morning.

Mr. Corbin: Yes, I think that is so.

Here is one thing, Judge, I think I omitted on direct.

The Court: Very well. 2713

Q. There is some testimony here, and I call it to your attention preliminary, coming from Hoffman to the effect that on April 7th when you left the conference at Schulman's office, he, Schulman, was out in the hall with you, and then, upon his return to his office where Hoffman was, said in words or effect, "Goldman is afraid to talk with you about the matter."

Did you have any talk with Mr. Schulman outside the office on that occasion? A. We did not. When I left he and Hoffman stayed in his room.

Q. And did you, either outside or inside or anywhere on that occasion or any other occasion say to Schulman in words or effect— 2714

Mr. Walsh: I object to this as improper redirect examination, if your Honor pleases.

The Court: Yes. My recollection is that that was gone into on direct examination, Mr. Corbin.

Mr. Corbin: No, I didn't touch on it.

Mr. Walsh: Well, it isn't proper.

The Court: If you have overlooked it I will let you reopen it.

Mr. Walsh: Then I will withdraw my objection.

Mr. Corbin: That is what I just said, that I overlooked this on the direct: 2715

Mr. Walsh: Then I will withdraw my objection.

The Court: Very well.

Mr. Corbin: To keep the continuity of the record, may I have the question as far as I went?

(Question read.)

Q. (Continued) "I am afraid to talk with Hoffman on this subject"? A. I never did.

Q. Or that you were amenable to going through with any improper settlement? A. I did not.

2716 Mr. Corbin: That is all.

Mr. Walsh: I have no further questions.

The Court: Stand aside.

(Witness excused.)

The Court: Who is next?

Mr. Corbin: We rest.

The Court: The defendant rests.

Mr. Fielding: The defendant Schulman rests.

The Court: Anything in rebuttal?

Mr. Walsh: May we take a three-minute recess at this time?

The Court: Yes, we will take a short recess.

2717 (Short recess.)

Mr. Walsh: If your Honor please, the government rests.

The Court: Very well. You may proceed with the summations.

Mr. Corbin: May it please the Court, for the record I move on behalf of my clients for a dismissal on the same grounds as stated at the close of the government's case, and an exception.

The Court: Yes. Very well. Let the motion be noted and it is denied.

2718 Mr. Fielding: And the same motion is made on behalf of the defendant Schulman.

The Court: Yes. Let the motion be denied.

Mr. Fielding: And an exception.

The Court: An exception to all parties.

Mr. Corbin: I suppose either now or later that you will tell the jury that your decision on those motions doesn't indicate any opinion on that?

The Court: Yes. I will do that at the conclusion —I will do that in my general charge, or I might do it now, that the overruling of those motions for a directed verdict has no effect one way or the other.

and is not intended to indicate how the Court feels as to the guilt or innocence of the defendants. That is simply a rule of law that the Court is of the opinion that the motions for a directed verdict should be denied. 2719

(Whereupon Mr. Fielding at 3.35 P. M. summed up the case to the jury on behalf of his client.)

The Court: I believe, ladies and gentlemen, we will take a recess at this time. We will not have any other summations this afternoon. It is now 4.20, and we will take a recess until 10 o'clock tomorrow. Be back at 10 o'clock tomorrow.

(Adjourned to July 26, 1940, at 10 o'clock A. M.) 2720

UNITED STATES OF AMERICA

—against—

MORTON L. GOLDMAN, et al.

New York, July 26, 1940;
10:00 A. M.

TRIAL RESUMED.

(Mr. Corbin made his summation to the jury.)

(During Mr. Corbin's summation the following proceedings were had:) 2721

Mr. Corbin: * * * There have been rumors around here that an innocent man cannot be acquitted here.

Mr. Walsh: Now I object to that, what the rumors are. There is no evidence to that effect.

The Court: Yes. I think the rumors are immaterial. Of course counsel is permitted wide latitude to talk on the evidence or to comment on the explanations on the evidence, but as to rumors as to whether or not a good many convictions or a good many acquittals are had I don't think are material.

2722 (Mr. Corbin continued his summation during which the following proceedings were had:)

Mr. Corbin: * * * Conversation taken through the microphone in the hole in the wall.

Mr. Walsh: If your Honor please, may I interrupt at this time, that conversation was not taken through the microphone in the hole in the wall.

Mr. Corbin: Oh yes; that is what they say.

The Court: The jury remembers the testimony. It is the particular function of the jury to remember what the testimony is.

2723 (Mr. Corbin continued his summation to the jury during which the following proceedings were had:)

Mr. Corbin: * * * During an argument they might have had in the library—

Mr. Walsh: That isn't in evidence, the argument they had in the library.

The Court: I will instruct the jury that counsel's recollection of the testimony is not controlling, but the jury finds the facts from all the evidence. You are the sole judges of the facts, members of the jury, as to what the evidence is and what the true facts are.

2724 (Whereupon Mr. Corbin concluded his summation to the jury.)

The Court: We will take a five-minute recess.

(Short recess.)

(Mr. Walsh summed up to the jury, during which the following proceedings were had:)

Mr. Walsh: * * * But they did not tell you what Judge Coxe also did, and because it isn't in the record I can't either. But I am not going into any defense of Judge Coxe.

Mr. Corbin: I object to the insinuation that there is something that Judge Coxe did or said that isn't in the record.

The Court: I instruct the jury that you make up your

verdict from the testimony and the reasonable inferences 2725
therefrom or from any insufficient amount of evidence that the defendants are guilty beyond a reasonable doubt. Arguments of counsel are made to aid the jury in arriving at a just verdict, but you will consider only such testimony as has been introduced in evidence and reasonable inferences therefrom. What testimony was ruled out you will not consider. You will consider no inferences from any testimony that was ruled out or any motive that prompted the Court to rule that they be ruled out. You may proceed.

(Mr. Walsh continued his summation to the jury during which the following proceedings were had:)

Mr. Walsh: * * * "That is why I was fit to be tied." 2726

Mr. Corbin: And the next one.

Mr. Walsh: And then he continues on—

Mr. Corbin: Will you read that next question there?

The Court: Very well, gentlemen. Just one at a time.

Mr. Walsh: And then he was asked—

The Court: If he goes outside of the record, you may object but I do not like attorneys to get into an argument.

Mr. Walsh: This is the record I am reading from.

The Court: I believe, gentlemen, we will take a recess until 2:15.

(Recess to 2:15.) 2727

AFTERNOON SESSION:

The Court: Is everybody present? Is Mr. Schulman present?

Mr. Fielding: Yes.

The Court: Very well, you may proceed, Mr. Walsh.

(Mr. Walsh continued his summation to the jury during which the following proceedings were had):

Mr. Walsh: * * * We have duties every day in the week, and it is nothing new, and I ask you to just give this case

2728 your careful consideration, and by your verdict in this case I hope that you will not be the ridicule of the community who are waiting for this nor give indulgence to the infraction of the divine commandment, "Thou Shalt Not Steal." Thank you.

Mr. Corbin: If your Honor please, I have one exception to note, and that is to the last statement by counsel to the jury that they should not by their verdict be the ridicule of the community who are waiting to receive their verdict. I except to that as not legitimate argument by a representative of our Government, and I ask that the jury be instructed now to disregard it.

2729 The Court: I sustain the motion and I instruct you now, ladies and gentlemen of the jury, that what the public thinks of this case is entirely immaterial and should be disregarded by you.

(Requests to charge respectfully submitted by the defendants Martin M. Goldman and Theodore Goldman):

The defendants Martin M. Goldman and Theodore Goldman, respectively, request the Court to charge the jury as follows:

2730 1. An assignee is a trustee for creditors. If an assignee or his attorney is in truth representing the assignor he cannot at the same time properly represent the creditors. At least, the likelihood of a conflict of interest in the dual representation is so great as to make it entirely proper for creditors to insist, in such case, upon the right of creditors to control the administration.

2. It would also be entirely proper and would not constitute a crime for creditors to advise an assignee's attorney, in such case, that they would file a petition in bankruptcy, if necessary, to prevent retention of control by such an assignee or such an attorney for an assignee.

Requests to Charge on Behalf of Defendant Goldman.

3. The filing of a petition in bankruptcy for the very purpose of removing control from the hands of a representative of the debtor would not be a crime. Such purpose is not a fraudulent purpose. 2731

4. Such purpose would still not be a fraudulent purpose even if the attorney filing the petition expected to be compensated for the services rendered in the course of the proceedings, whether such compensation was anticipated either from his own client, or by way of allowance out of the estate.

5. On a bulk sale and settlement with creditors, attorneys who perform services beneficial to the creditors as a whole are entitled to be compensated out of the estate 2732 and such compensation is a part of administration expenses.

6. It was the duty of these defendants at all times to so act as to promote and further the interests of their client, the creditor Harry Levy, and if you find from the evidence that the bankruptcy petition was filed and dismissed in the honest belief on the part of these defendants that their client's interests would be promoted by a bulk sale disposition of the assets, then you must acquit.

7. It is undisputed evidence in this case that the Goldman firm was authorized to act on behalf of their client Harry Levy in respect of both the filing and the dismissal of the involuntary petition in bankruptcy. 2733

8. The involuntary petition in bankruptcy could have been dismissed by the Court at any time on notice to the creditors, whether or not it contained an allegation of the assignment for the benefit of creditors.

9. Hoffman's testimony, even on the basis of his own version, that he agreed with Schulman on April 5 to divide a secret part of the sale price, would place him in the class of an accomplice, and require that his entire testimony be viewed with suspicion and accepted only with caution. (See Record, pp. 90-91.)

Requests to Charge on Behalf of Defendant Goldman.

2734 10. Hoffman's own personal pecuniary interest in the Hymowitz case also requires consideration on the question of his credibility.

11. The entry into Schulman's private office on the night of April 6 without his knowledge or consent was an illegal act and a violation of his constitutional rights.

12. Any evidence obtained by such illegal invasion must be disregarded.

13. The placing of a hearing device against the outer wall of Schulman's office was likewise an invasion of his constitutional rights and any evidence thereby obtained must be disregarded.

2735 14. Insofar as the defendant Martin Goldman was present at any meeting in Schulman's office where such devices were used by Government agents to detect the conversation, his right to privacy was equally infringed.

15. Insofar as any hearing device was used to listen to conversations, or parts thereof, taking place over Schulman's telephone, the act of listening was illegal and any evidence directly or indirectly obtained against any party to such telephone conversation must be disregarded.

16. In determining what weight you will give the testimony of the FBI agent Turner, you may consider the undisputed fact that on the night of April 6 he entered Schul-
2736 man's private office without the latter's knowledge or consent and installed a carbon disc microphone in a hole in the wall.

17. Before you may convict any defendant in this case you must be satisfied by the evidence and beyond every reasonable doubt that he conspired fraudulently to participate in a secret profit to be derived from a theft of part of the actual selling price of the assets.

18. A mere agreement among the attorneys on the amount each should receive for services is neither fraudulent nor a crime.

Requests to Charge on Behalf of Defendant Schulman.

(Requests to charge respectfully submitted by the defendant Jacob P. Schulman): 2737

The defendant Jacob P. Schulman respectfully requests the Court to charge the jury as follows:

1. That it is undisputed evidence in this case that Schwartz & Zuckerman and Ribach & Mantis authorized Jacob Schulman to sign the petition in bankruptcy as their attorney-in-fact.

2. That the filing of the petition in bankruptcy against Hymowitz by Jacob Schulman as attorney for petitioning creditors transferred jurisdiction over this estate to the United States District Court and superseded the assignment proceeding brought under the law of the State of New York. 2738

3. That the filing of the petition in bankruptcy against Hymowitz gave to the creditors of Hymowitz through their duly elected representative the right to liquidate the estate to the exclusion of the assignee.

4. That if Jacob Schulman, as attorney for petitioning creditors, in not opposing the dismissal of the petition in bankruptcy did so in the belief that it would be helpful to the creditors in obtaining a bulk sale, such action on his part is not for a fraudulent purpose.

5. That the alleged conspiracy to set aside a secret fund out of the estate assets of $400 was inaugurated on March 25, 1937 at a meeting of creditors which Jacob Schulman did not attend and who could have had no knowledge of it at that time. 2739

6. That the testimony of Jacob Schulman as to what transpired in his office in the conferences with Robert Hoffman and Martin Goldman is clearer and more complete evidence than the transcripts of those conversations obtained by the listening device employed by the FBI.

7. That the entry of the Government agents in Schul-

2740 man's office on April 6, 1937, was a trespass and was an invasion of Schulman's constitutional rights.

8. That the jury should disregard any evidence obtained by this illegal entry.

9. That the fixation of any listening device and the accompanying apparatus on the outside wall of Schulman's office by which conversations in Schulman's office could be heard and recorded without his knowledge and consent was an invasion of the constitutional rights of Schulman. Evidence thus obtained should be disregarded.

10. It is not unlawful nor fraudulent for attorneys who have rendered legal services to an insolvent estate to confer
2741 among themselves and to determine how they shall be remunerated nor can such acts be considered a criminal conspiracy.

Charge of the Court.

The Court: You shall make up your verdict from two things and two things alone. One is the facts in the case. You determine what the facts are from the testimony delivered upon the witness stand, and the other is, that applying the law to those facts you shall determine whether or not any
2742 of these defendants are guilty or innocent. Those things and those alone are the things that shall influence you and guide you in arriving at a verdict.

The burden of proof is upon the Government to prove the defendants guilty beyond every reasonable doubt. If the Government does that it is your duty to convict them. If the Government fails to do that it is your duty to turn them out. You shall be influenced by nothing in the world other than the law and the evidence. You shall not be influenced by any sympathy or favoritism. Nor shall you be influenced by any ill will, any malice, any invective or

anything that may have been said that was not borne out 2743
by the evidence because the duty of the jury and the duty of the Court is to act upon the evidence and the law and those things alone. If the defendants have been proven beyond every reasonable doubt you should not hesitate one minute to convict them. If, on the other hand, the defendants have not been proven guilty beyond every reasonable doubt you should not hesitate one minute to turn them loose. Let your conscience be your guide in doing that which is right, that is, following the law and the evidence in the case.

The defendants in the case are lawyers. You shall not 2744
let that influence you one way or the other. If you have particular friends who are lawyers or friends of these lawyers that you would like to favor just because of the friendship, that would be wrong. On the other hand, if you have any ill-will or any malice toward the law profession or toward lawyers in general you should totally disregard that and try this case just as though they were three insignificant defendants charged with crimes, and if they have been proven guilty beyond a reasonable doubt then you should so find; but if they have not been you should find them not guilty.

The defendants are charged with a conspiracy to violate 2745
the Bankruptcy Act. I will not define a conspiracy right at this time but will later on. Upon the trial of that issue, upon the trial of that charge the defendants are presumed to be innocent. They start out in the trial of this case clothed with the presumption of innocence. That presumption follows them throughout the entire trial of the case until it is overcome by proof which convinces beyond every reasonable doubt their guilty. If the proof convinces beyond every reasonable doubt of their guilt, then the presumption of innocence fades away and it is your duty to act upon the proof. But if the proof does not convince beyond every

2746 reasonable doubt then it is your duty to indulge that presumption of innocence and acquit them.

Several instructions have been requested by the defendants and by the Government, some of which I will give and some of which I will refuse, but these instructions that have been requested by the defendants which I will give are just as fully the law as if I had given it to you without being so requested to do. In other words, every instruction that has been requested which I shall read to you as given it is your duty to take that as the law in the case and to follow it just as though I had given it without being requested. However, these instructions will not conflict with
2747 any other instructions that I will give you later on.

All the instructions are taken as a whole and explain the various questions that are involved in the case, so before proceeding to the general charge I will give you these instructions as the law in the case; and they are the law. The instructions requested by Mr. Martin M. Goldman and Theodore Goldman I give as follows:

1. An assignee is a trustee for creditors. If an assignee or his attorney is in truth representing the assignor, he cannot at the same time properly represent the creditors. At least, the likelihood of a conflict of interest in the dual
2748 representation is so great as to make it entirely proper for creditors to insist, in such case upon the right of creditors to insist, in such case, upon the right of creditors to control the administration.

2. It would also be entirely proper and would not constitute a crime for creditors to advise an assignee's attorney, in such case, that they would file a petition in bankruptcy, if necessary, to prevent retention of control by such an assignee or such an attorney for an assignee.

3. The filing of a petition in bankruptcy, for the very purpose of removing control from the hands of a repre-

sentative of the debtor would not be a crime. Such purpose 2749
is not a fraudulent purpose.

4. Such purpose would still not be a fraudulent purpose, even if the attorney filing the petition expected to be compensated for the services rendered in the course of the proceedings, whether such compensation was anticipated either from his own client or by way of allowance out of the estate.

5. On a bulk sale and settlement with creditors, attorneys who perform services beneficial to the creditors as a whole are entitled to be compensated out of the estate and such compensation is a part of administration expenses.

6. It was the duty of these defendants at all times to 2750
so act as to promote and further the interests of their client, the creditor Harry Levy, and if you find from the evidence that the bankruptcy petition was filed and dismissed in the honest belief on the part of these defendants that their client's interests would be promoted by a bulk sale disposition of the assets, then you must acquit.

7. It is undisputed evidence in this case that the Goldman firm was authorized to act on behalf of their client Harry Levy in respect of both the filing and dismissal of the involuntary petition in bankruptcy.

8. The involuntary petition in bankruptcy could have 2751
been dismissed by the Court at any time on notice to the creditors, whether or not it contained an allegation of the assignment for the benefit of creditors.

9. Hoffman's testimony, even on the basis of his own version, that he agreed with Schulman on April 5 to divide a secret part of the sale price, would place him in the class of an accomplice, and require that his entire testimony be viewed with suspicion and accepted only with caution.

10. Hoffman's own personal pecuniary interest in the Hymowitz case also requires consideration on the question of his credibility.

2752 11. The entry into Schulman's private office on the night of April 6 without his knowledge or consent was an illegal act and a violation of his constitutional rights.

12. Any evidence obtained by such illegal invasion must be disregarded.

That instruction particularly I call your attention to as given, and specifically I instruct you that any evidence that might have been obtained by going into Schulman's office was illegal. I recall no evidence whatsoever that was permitted to go in that was obtained by any entry into Schulman's office, but if any crept in, then you would disregard that. I permitted testimony to be shown that an
2753 entry was made into Schulman's office and that was shown by the defendants upon the theory and for the purpose of affecting, if you thought it ought to be affected, the weight and credibility that was to be given to the witnesses for the Government who made the entry therein. That was the only purpose that that was permitted to be shown, that the office of Schulman was entered, so with that explanation I again charge you that if any evidence was obtained by the actual entry of Government agents into Schulman's office, then you would disregard that testimony because the entry was not lawful.

2754 I charge you at this time, ladies and gentlemen—I will digress long enough while it is on my mind, digress from these requested instructions——that you are not concerned with how the evidence was obtained, that is, evidence that was admitted by the Court. It is your duty to consider every piece of evidence that was admitted by the Court. You are not concerned with how it was obtained and whether it ought to be the law that it was obtained that way or not. It is your duty to consider the weight of it and what belief you will give the witnesses. All the evidence that the Court admitted before you is competent evidence, and it is your duty to consider, and if you believe it, act

upon it, but whether you believe it or disbelieve any evi- 2755
dence is entirely for you.

Instruction 13 I refuse.

Instruction 14 I refuse.

Instruction 15 I refuse.

Instruction 16 I give.

In determining what weight you will give the testimony of the FBI agent Turner, you may consider the undisputed fact that on the night of April 6 he entered Schulman's private office without the latter's knowledge or consent and installed a carbon disc microphone in a hole in the wall.

17. Before you may convict any defendant in this case 2756
you must be satisfied by the evidence and beyond every reasonable doubt that he conspired fraudulently to participate in a secret profit to be derived from a theft of part of the actual selling price of the assets.

18. A mere agreement among the attorneys on the amount each should receive for services is neither fraudulent nor a crime.

Instructions requested by the defendant Jacob P. Schulman I give as follows:

1. That it is undisputed evidence in this case that Schwartz & Zuckerman and Ribach & Mantis authorized Jacob Schulman to sign the petition in bankruptcy as their 2757
attorney-in-fact.

2. That the filing of the petition in bankruptcy against Hymowitz by Jacob Schulman as attorney for petitioning creditors transferred jurisdiction over this estate to the United States District Court and superseded the assignment proceeding brought under the law of the State of New York.

3. That the filing of the petition in bankruptcy against Hymowitz gave to the creditors of Hymowitz through their duly elected representative the right to liquidate the estate to the exclusion of the assignee.

2758 4. That Jacob Schulman as attorney for petitioning creditors in not opposing the dismissal of the petition in bankruptcy did so in the belief that it would be helpful to the creditors in obtaining a bulk sale, such action on his part is not for a fraudulent purpose.

No. 5 I refuse.

No. 6 I will give, with an explanation:

That the testimony of Jacob Schulman as to what transpired in his office in the conferences with Robert Hoffman and Martin Goldman is clearer and more complete evidence than the transcripts of those conversations obtained by the listening device employed by the FBI.

2759 That is true. The conversation as narrated by the defendant Jacob P. Schulman is more complete and clearer than the transcript, if believed, and whether or not it is to be believed is entirely for you to determine. And by me making this comment I do not mean to intimate that I believe it or I disbelieve it. That is your province entirely, as to what weight you will give to the testimony of any evidence.

While his narration of what transpired is much clearer, much more complete because it is shown that parts of the conversations as narrated by the stenographer who took it, as shown upon its face, were incomplete. But 2760 if taken with all of the other evidence in the case, with all the facts and circumstances in the case, it convinces beyond every reasonable doubt the guilt of the defendant, then it is your duty to act upon it. But if, upon the other hand, you have a reasonable doubt as to whether he is guilty or not, it is your duty to acquit him.

No. 7: That the entry of the Government agents in Schulman's office on April 6, 1937, was a trespass and was an invasion of Schulman's constitutional rights.

That is correct. It was illegal for the entry to be made into his private office on the evening of April the 6th.

and any testimony, if any crept in, by reason of that entry into the office, should be disregarded but all other evidence that I have permitted to go in is competent and is to be considered along with all of the evidence in the case. 2761

No. 8: That the jury should disregard any evidence obtained by this illegal entry.

No. 9 I refuse.

No. 10 I give: It is not unlawful nor fraudulent for attorneys who have rendered legal services to an insolvent estate to confer among themselves and to determine how they shall be remunerated nor can such acts be considered a criminal conspiracy.

Ladies and gentlemen, those instructions I have read, along with the remainder of the instructions that I shall give you and what I gave prior to reading those, will all constitute the law of the case. 2762

As related in the instructions that I have given at the request of the defendants, it is not unlawful for attorneys to charge fees. It is not unlawful for attorneys to have conferences and to make an honest effort to determine what will be the best benefit or for the best interest of their clients, as long as they are acting within the law and along the lines that are approved by the law. Creditors have a right to appear when an assignment has been made for the benefit of creditors and to object to the assignee acting; they can make application to the Court to have an assignee or the attorney for the assignee removed. There isn't anything wrong in that. If attorneys appear representing creditors and render services that are beneficial to the estate that the attorney and the assignee would not have rendered, then they are entitled to compensation for that. They have the right to appear before a Court and ask the Court to remove an assignee and appoint someone else. They have a right to appear before a Court and ask the Court to appoint 2763

2764 a co-assignee. However, the Court is not required to do that merely upon their application. Nor when an assignee is acting, has filed his assignment with the Court and has employed him as attorney to represent him, that attorney and that assignee are not required to join as co-assignee or co-attorney any other creditor or any other assignee suggested by the creditors, unless he wishes. He can do it if he wants to. They could make an agreement among themselves—for instance, in this particular case Mr. Hoffman, if you find by what these conversations happened—and by telling you that I do not mean to intimate that they did or did not, but 2765 if they appeared before Mr. Hoffman and asked him to permit them to appoint a co-assignee and a co-attorney, Mr. Hoffman could have done it and they could have agreed that the fees which would be allowed Hoffman and the assignee would be split between them, and that would have been lawful as long as they were acting honestly and aboveboard and not splitting any secret fees, if any such arrangement were made. On the other hand, they had the right, by agreement, to appear there and say to Hoffman, "We want somebody to sit in with you, and we will designate a man to sit in with you and not charge you anything. We simply want to see that it is perfectly 2766 and fairly administered." That would be permissible. So that as long as they are acting lawfully and within the rights, they can do so. The creditors could all agree that the assignment be withdrawn and that the stock of merchandise be sold in bulk, and the attorneys representing the assignee would have been entitled to a reasonable fee to have been fixed by the Court for the work that had already been done up until that time, and then they would have been entitled to reasonable compensation.

If all the creditors agreed that a bulk sale should be made and reasonable compensation be paid to those who

actually worked and the remainder divided among creditors, that would have been lawful. On the other hand, creditors also have the right when an act of bankruptcy has been committed to file a petition in bankruptcy and have the assignor adjudicated a bankrupt and his entire assets administered through the Bankruptcy Court. Whenever that is done, then the Bankruptcy Court takes complete jurisdiction; in other words, takes complete charge of the assets of the bankrupt. Then, within a certain time after notice to creditors is given, the trustee is elected by the creditors themselves and he acts under the direction and supervision of the referee in bankruptcy, with the right of appeal to the Federal Court from any decision that anybody feels aggrieved at by the referee in bankruptcy. The fees that are allowed to the trustee in bankruptcy and to the attorney representing the trustee in bankruptcy and to the attorneys who file the petition to have him adjudicated are determined by the Court. In the first instance it is determined by the referee unless it goes to a certain large amount, with the right always to appeal to the Court to determine the justice of it, but the referee hears evidence and determines what the just fees are. 2767 2768

So that in this case, when this assignment was filed by Mr. Hoffman of the assets of Hymowitz, by Hymowitz filing an assignment for the benefit of creditors, then an act of bankruptcy was committed. The creditors have a right to file a petition to have him adjudicated a bankrupt upon the ground that he had made an assignment for the benefit of creditors, provided that a sufficient number of creditors and a sufficient amount of claims petitioned the Court to do that. 2769

Let me see the indictment and the petition, will you please, Mr. Clerk.

(Papers handed to the Court by the clerk.)

So that now we come down to what is the charge in this case. A lawful bankruptcy is always permissible. When the facts have occurred which justify the adjudication of bankruptcy, then an insolvent man has a right to petition voluntarily to go into bankruptcy. If he does not, then the creditors have a right to have him thrown in bankruptcy. That contemplates a fair, honest legal administration of the estate through the Bankruptcy Court, and if the attorneys, the trustees and others connected with it act in the matter honestly and with no intent to defraud, then no crime is committed even though a mistake might be made. You are not concerned with mistakes in this case. You are not concerned in this case whether it was best to throw it into bankruptcy or whether it was best to have a bulk sale or whether it was best to have it go through the assignment. It concerns you in no way whatsoever as to whether that was the best thing to do or not, other than what weight you should give to the testimony of various witnesses. The question for you to determine is whether or not a crime has been committed, and at this point before I forget it let me say this to you:

Hoffman is not on trial. The only three defendants who are on trial are Martin M. Goldman, Theodore Goldman and Jacob P. Schulman. You are not concerned with whether Hoffman is a crook or whether he is guilty of misconduct or a violation of ethics. More than that, you are entitled and should take into consideration any interest that he might have in the case or anything that has transpired that might affect his credibility. You are not trying Kandell because Kandell is now out of the case, and while I am on that I will say that the dismissal of the indictment as to Kandell by the Court is no proof of the guilt of these defendants nor is it any proof of the innocence of these defendants. He is

out of the case, whether the Court was right or whether 2773
the Court was wrong. He is out of it and you are concerned not with any errors that the Court might have made but you are concerned only with whether or not these three defendants now on trial are guilty of this crime with which they are charged.

I might say at this time also that the reason Kandell was acquitted by the Court was because there was not sufficient evidence to show that he had knowledge of whether or not any conspiracy unlawfully had been formed, because one of the essential elements of this crime, as to all three of these defendants or any other one who may be charged with a crime of this type, is knowledge and 2774
intent to engage in the unlawful conspiracy.

The defendants here are charged with having on or about the 24th of March, 1937, and continuously thereafter up until April, 1938, wilfully, unlawfully and knowingly "combined, conspired, confederated and agreed together and with each other and with divers other persons to the Grand Jurors unknown, to commit certain offenses against the United States, to wit, to violate Section 29 (b) (5), of the National Bankruptcy Act, (Title 11, Section 52 (b) (5), United States Code), that is to say, at the time and place aforesaid, the defendants as aforesaid knowing that one Paul Hymowitz had executed a general assign- 2775
ment for the benefit of his creditors to Samuel S. Kolman, assignee, and that one Robert Hoffman was attorney for the said Samuel S. Kolman, assignee, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other that they would institute and cause to be instituted a bankruptcy proceeding, to wit, that they would file and cause to be filed a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt; and that they would knowingly and fraudulently receive and attempt to obtain from Robert

Hoffman, the attorney aforesaid, Samuel S. Kolman, the assignee aforesaid and Paul Hymowitz, the alleged bankrupt aforesaid, and divers other persons to the Grand Jurors unknown, divers monies, remunerations, compensations, rewards, and advantages and promises thereof, to wit, a sum of approximately $400, the exact amount being to the Grand Jurors unknown, not properly due and belonging to the said defendants, and promises thereof and certain other monies, property, remunerations, compensations, rewards, and advantages, and promises thereof not more particularly known to the Grand Jurors aforesaid, in consideration of and for acting and forbearing to act in the said bankruptcy proceeding, to wit, for acting to dismiss and cause to be dismissed the said petition in bankruptcy and forbearing to act to oppose and cause to be opposed the dismissal of the said petition in bankruptcy.

"It was part of the conspiracy aforesaid that Theodore Goldman and Samuel Irving Kandell, two of the defendants aforesaid, claiming to represent creditors, would seek to obtain from Robert Hoffman, the attorney aforesaid, and Samuel S. Kolman, the assignee aforesaid, the appointment of Samuel Irving Kandell, as co-assignee, and of the firm of Goldman, Malter & Goldman, of which Theodore Goldman and Martin M. Goldman, two of the defendants aforesaid, were partners, as co-attorneys for the assignee aforesaid, and that after this attempt had proven unsuccessful, Jacob F. Schulman, one of the defendants, would file a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt and that the said petition would be drawn in such a way that the defendants could procure its dismissal.

"It was further a part of the said conspiracy that the defendants would knowingly and fraudulently receive and attempt to obtain from Robert Hoffman, the attorney

aforesaid, Samuel S. Kolman, the assignee aforesaid, and 2779
Paul Hymowitz, the alleged bankrupt aforesaid, a promise that they would consent to a settlement with the creditors of Paul Hymowitz aforesaid pursuant to which the assignment proceedings would be dismissed and the creditors aforesaid would receive about forty per cent of their claims," and so forth. I don't think it is necessary to read the balance of the indictment. You will have it out with you.

And that in pursuance of that alleged conspiracy certain overt acts were committed in furtherance of it. That is what the indictment charges. Let me say right here for fear that I might overlook it that the finding of the 2780
indictment is no evidence against the defendants. It is simply a charge that puts them to trial up here before a petty jury and constitutes no evidence whatsoever against them, and when they are brought to trial upon that indictment the burden rests upon the Government to prove them guilty of it beyond every reasonable doubt. If the Government fails to do that they are entitled to an acquittal. If the Government does that, then they should be convicted.

The Bankruptcy Act which is alleged to have been violated makes it a crime, and it is unlawful for any person to receive or to attempt to obtain any money or 2781
property, remuneration, compensation, reward, advantage or promise thereof from any person for acting or forbearing to act in any proceeding under this title. So that now, in short, this indictment charges that these defendants agreed among themselves, and probably with various other persons unknown, to violate that act in that they would use the Bankruptcy Court as a subterfuge or a conduit through which they would force a settlement with Hoffman and Hymowitz, and then withdraw that petition in bankruptcy, have it dismissed, and would then,

2782 if the agreement were made and went through, sell the stock of goods either in bulk or at private sale at a greater price than they would disclose to the creditors, would disclose to the creditors a certain amount of funds, saying to the creditors that this was all that was obtained for the sale of those goods, which was to be divided among creditors, and that the secret fund would be divided among the defendants.

The Government alleges that in pursuance of that agreement that they did have various meetings and did make that agreement and that in furtherance of it, in carrying it out, they caused to be filed a petition in bankruptcy 2783 which upon its face was demurrable, that is, to be dismissed without notice to the creditors, and that was done with the fraudulent intent to forbear or to use the Bankruptcy Act in furtherance of their own private gains.

If you believe that beyond every reasonable doubt, if these defendants did that and the Government has shown that beyond every reasonable doubt, you should not hesitate to convict them but if, on the other hand, you have a reasonable doubt in your minds as to whether that is true or not then you should not hesitate to acquit them.

The filing of the petition in bankruptcy of itself is 2784 no evidence whatsoever because they had the right to file the petition in bankruptcy and to have this man adjudicated a bankrupt, but if they did that with the fraudulent intent to enrich themselves, with the intent and purpose in mind that when they found they were not going to carry through the bankruptcy proceeding but were going to use it as a conduit to carry out their scheme, and that they would dismiss it—that they would enrich themselves and it was done with the intent to defraud, then you should convict them, but if you have a reasonable doubt as to whether that is true or not, then you should turn them loose.

Ordinarily—and it is the duty of attorneys as well 2785
as litigants acting through attorneys—when they file a petition in bankruptcy or whenever they file any other document in court, they should state the facts as recognized to them to be true or upon which they have a reasonable basis that they are true and to file them in good faith believing them to be true. If they do not do that, if they do use a subterfuge and file things that are not true, then that is a circumstance to be considered by the jury in determining whether or not the defendants were guilty of a crime or whether it was done simply through oversight, through error, through
mistake or someone not acting with a fraudulent intent. 2786

In this particular case, when Hymowitz made an assignment for the benefit of his creditors, he committed an act of bankruptcy and if attorneys were going to file a petition to have him adjudicated a bankrupt it was their duty to have alleged that fact or to have alleged other acts of bankruptcy that were true or that were believed by them in good faith, after a reasonable investigation, to be true. In this case this petition in bankruptcy, which is a printed form to a certain extent, filled in by a typewriter as to blank, alleges and avers to the Court that Paul Hymowitz was a citizen of the New York
district, and so forth, and that he owes debts in the sum of 2787
$1000 or over and that he has been engaged in the business of selling men's wearing apparel and so forth, and that these petitioning creditors who signed this petition of the alleged bankrupt have provable claims against the alleged bankrupt, Hymowitz, amounting in excess to the value of securities held by them to over $500 and that the nature and amount of petitioners' claims are as follows, and then it sets out what the nature of the debts owing by Hymowitz to them was.

Then it alleges, as it is required to before they can

2788 secure an adjudication in bankruptcy or have a man declared a bankrupt, that he has committed certain acts of bankruptcy. Here is one that they allege:

"Your petitioners further allege that the said alleged bankrupt while insolvent and within four months next preceding the filing of this petition and while insolvent as aforesaid, committed an act of bankruptcy, in that he did the following acts:

"1. That the alleged bankrupt with intent to hinder, delay or defraud his creditors, and with intent and for the purpose of giving a preference contrary to the provi-
2789 sions of the Bankruptcy Act and upon pretended and alleged antecedent indebtedness claimed or alleged to be due from the said alleged bankrupt to divers persons, firms and corporations, transferred and set over unto said divers persons, firms and corporations whose names are unknown to your petitioners valuable property, consisting of money, merchandise, accounts and dues receivable of the value of $500 applicable to the payment of the debts of the said alleged bankrupt."

You will note in that that it alleges that he set aside $500 or property to the value of $500 to creditors who were not entitled to it.

2790 "2." —an act of bankruptcy alleged to have been committed—"That while insolvent as aforesaid the said alleged bankrupt transferred various moneys amounting in the aggregate to the sum of $500 to various of his creditors with intent thereby to prefer such creditors over other creditors of the same class, the names of such preferred creditors being unknown to your petitioners."

And then No. 3 is stricken out; No. 4 is stricken out; No. 5 is stricken out and No. 6 is not filled in and is not stricken out. No. 6 reads as follows:

"That on or about the day of 193 , the

alleged bankrupt above named made an assignment for the benefit of creditors, to which assignment was recorded in the office of the Clerk of the County of on the day of , 193 ." 2791

No. 7 is stricken out.

No. 8: "That there are more than twelve creditors in number of said alleged bankrupt."

If he had filled in No. 6 correctly, giving the date that the assignment was made for the benefit of creditors, then this petition in bankruptcy could not have been dismissed by the Court without first giving notice to all of the creditors of the bankrupt, whereas having been filed as it is, not being sufficient upon its face, then a demurrer—what is in the nature of a demurrer to it—was sustained without notice to the creditors. 2792

Another thing is that when creditors file a petition against a man to have him adjudicated a bankrupt and claim that he made an assignment for the benefit of creditors or that he transferred property in the amount of $500 or more with the intent to prefer creditors, the bankrupt, the man against whom the petition is filed, is entitled to contest that and to a trial by jury if he asks for it within the time that he is permitted to file an answer to it.

So that when an allegation is made that a man has transferred more than $500 worth of his property to creditors for the purpose of preferring them or has concealed more than $500 from his creditors, he is entitled to contest that, and if it is not true, then he will not be adjudicated a bankrupt. Likewise, he is permitted to contest the filing of an assignment for the benefit of creditors, but if it is true that an assignment for the benefit of creditors has been made within four months, then he cannot escape bankruptcy because that is an act of bankruptcy. 2793

2794 But now then, I call your attention to this, ladies and gentlemen of the jury, not for the purpose of emphasizing it nor for the purpose of indicating to you that I believe that that was the motive behind the manner in which that was filed or that I do not believe that that was the motive because that is the function of the jury to determine, that if the defendants' explanation of that is that it is customarily done, say that a man has committed an act of bankruptcy by transferring more than $500 of his property to one of his creditors for the purpose of preferring him or that he concealed it for the purpose of hindering and delaying his creditors— that that
2795 was customarily done and that he handles a great many of them and if he has efficient secretaries and efficient stenographers he can say to them, "Take this, fill it out, charge an act of bankruptcy there"—that that is what was done in this case. If that was done or if you have a reasonable doubt in your mind as to whether that was done or not, then this in itself would not be sufficient to show any conspiracy and would not be any evidence of the conspiracy. So it is a question for you to determine whether or not it was done in good faith. The whole question comes down to this, ladies and gentlemen, whether or not they were acting in good faith, or were they acting
2796 with the intent to defraud and in pursuance of a conspiracy.

If they were acting in pursuance of an unlawful agreement and with the intent to defraud, and that this petition was filed with the knowledge and purpose, in view and knowing that they could file a motion to dismiss it without giving notice to the creditors, and that that was a part of a scheme to defraud and entered into and in furtherance of that scheme, if one were made, then they would be guilty; but if, on the other hand, you have a reasonable doubt in your minds as to whether any agreement ever was made and that this was done in pursuance of it, then you will acquit them.

So that, ladies and gentlemen, here is your case: The 2797
Government alleges that these defendants entered into an unlawful agreement to use the Bankruptcy Court for the purpose of extorting fees, in short, for the purpose and with the intent to defraud the creditors and to obtain money or advantages or remuneration for their own purpose. If you believe beyond every reasonable doubt that they did that, then it is your duty to convict them. If, on the other hand, you have a reasonable doubt in your minds as to whether that is true or not it is your duty to acquit them.

As I said a few moments ago, they have the right to 2798
file a petition in bankruptcy. They have the right to withdraw the petition in bankruptcy under certain circumstances, as in this case, if it is done in good faith and was not done in pursuance of any conspiracy. In other words, if you should believe from the evidence in this case that these lawyers had the creditors' meeting down there, that they participated in it and they met there with honest motives, with the sole purpose in view of performing the duties to these creditors for their best interests and that they reached the conclusion that the best thing to do was to withdraw the assignment, withdraw the bankruptcy, and to have it sold in bulk sale, why, then they had a 2799
perfect right to do that even though it did not pay but 10 or 12 or 15 per cent on the dollar. But if, on the other hand, the unlawful agreement was entered into, that it was done with the fraudulent intent to defraud the creditors and the Bankruptcy Court was used as a conduit through which to carry out that fraudulent scheme, then they would be guilty of a crime and if they have so shown beyond every reasonable doubt, it is your duty to convict them. If, on the other hand, they have not been so shown it is your duty to acquit them.

A conspiracy, ladies and gentlemen, is this: It is an

2800 unlawful agreement between two or more persons to commit a crime against the Government of the United States, and that one of them do some overt act in furtherance of that conspiracy. It does not have to be in writing. It does not have to be express. It does not have to be definitely agreed to; that is to say, all of the terms at one time. It is sufficient if there is an agreement, express, implied or tacit, that they will commit a crime against the United States and one of them in pursuance of that agreement does some overt act to carry it out. If an agreement is reached to violate a law of the United States and an overt act is committed in furtherance of it, then all are guilty of it
2801 who enter into it whether they do any of the overt acts or not. In other words, if half a dozen people or a dozen people conspire to commit a crime and one of them does an overt act in furtherance of it after the conspiracy is entered into, then all are guilty. Likewise, it does not have to be entered into by all at one time. Others can join the conspiracy. If two or more people enter into a conspiracy to commit a crime and later on others join that conspiracy with knowledge of its purpose, and enter into it with knowledge of its purpose, and thereafter one of them does some act in furtherance of it, then all are guilty. In other words, whenever one person does an overt act in
2802 furtherance of a conspiracy all are guilty. So that in this case if you believe from the evidence beyond every reasonable doubt that these three defendants entered into a conspiracy to violate this act of Congress, this Bankruptcy Act, and that in pursuance of that conspiracy one of them did an act in furtherance of it, why, then all of them would be guilty, and that it is done with the intent to defraud.

As to Teddy Goldman, one of the essential elements of the conspiracy is knowledge. Evidence as to Teddy Goldman is circumstantial. Evidence as to the others, if be-

lieved, is direct. If you believe from the evidence beyond 2803
every reasonable doubt, from all of the facts and circumstances and evidence in the case beyond every reasonable doubt that Martin Goldman and Schulman entered into the conspiracy and that an overt act was done in furtherance of it you would convict them. On the other hand, if you have a reasonable doubt in your minds as to whether that is true or not you will turn them loose.

Then as to Teddy Goldman, the method of proof is different, and by the way, before I go on to that, a conspiracy may be proved by any evidence if it meets the requirements of the law. It may be proved by circumstantial evidence; 2804
it may be proved by direct and positive evidence, and wherever there is direct and positive evidence the law requires the proof to rise beyond a reasonable doubt, but where circumstances are entirely relied upon, then the circumstances must rise to the point that they exclude every other reasonable hypothesis than that of guilt.

If you should believe from this evidence beyond every reasonable doubt that Martin Goldman and Schulman entered into a conspiracy and if you should believe from the facts and circumstances to the exclusion of every other reasonable hypothesis than that of guilt, that Theodore Goldman joined it with full knowledge of its purposes 2805
and that thereafter an overt act was done, why, then he too would be guilty.

So I think that just about covers a conspiracy. Ladies and gentlemen, in weighing the testimony of all the witnesses in the case, of every witness who testified, it is your duty to consider all of the testimony. You are the sole judges of the weight of the testimony and of the credibility of the witnesses. If you should believe from the testimony that any witness has wilfully, knowingly and fraudulently and corruptly sworn falsely to a material fact in the case you may disregard the testimony of any

2806 such witness or witnesses, or altogether if you desire. In weighing the testimony of all witnesses you may take into consideration any interest in the outcome of the case that the witness may have in the case. You may take into consideration any statements made on prior occasions that are in conflict with the ones testified to on the witness stand and the explanations that are made with reference to variances, if there are any variances. Then weigh it in the light of the interest of the witnesses that were on the stand or any other thing that affects their credibility.

2807 You, in the last analysis, are the sole judges of what worth you will give to any testimony and what belief you will give to the testimony of any witness.

The defendants in the case are competent witnesses in their own behalf. Their testimony is entitled to the same consideration by you as that of any other witness, but what weight and what belief you will give to the testimony of the defendants, as well as any other witness, is entirely for you to determine for yourselves. In weighing the testimony of the defendants you are entitled to consider that they are vitally interested in the outcome of the trial of the case. Consider that in weighing their testimony. They

2808 are competent witnesses and their testimony is entitled to the same consideration. The fact that they are defendants does not of itself require you to totally disregard their testimony, but on the other hand, you are required to give careful consideration to all of the testimony there is, along with all of the others and then say from all of the facts and circumstances whether or not you believe from this evidence beyond every reasonable doubt that the defendants are guilty. If they are, promptly find them guilty. If you don't so believe, then find them not guilty.

Reasonable doubt does not mean a mere possibility. It is not a fanciful thing. The law does not require that the

Government prove them guilty to an absolute certainty, but 2809
it does require that they be proven guilty beyond every reasonable doubt. Reasonable doubt is very difficult to define. I really cannot find a much better definition than what it says, simply a reasonable doubt. It must be a doubt based upon some facts or a lack of some facts from which a reasonably prudent person would say that there is doubt "in my mind as to whether a certain thing is true or not." It is based upon some reason, such reason as a reasonably prudent person would say is a reasonable justification or a reasonable basis.

As I say, mere possibility, mere fancy, mere sympathy or 2810
anything like that cannot raise a reasonable doubt. It can arise from an insufficient amount of evidence or it can arise from all of the evidence. If there is a reasonable doubt in your minds as to their guilt it is your duty to give them the benefit of it and acquit them. If there is not any reasonable doubt in your minds as to their guilt, then it is your duty to convict them. That is the law, regardless of anything else or how you might feel in the case.

Another fact that was commented upon, the failure of former grand juries to indict. The failure of a former grand jury to indict does not necessarily mean the defendants are not guilty. The question of their guilt or 2811
innocence is to be determined from all of the facts and circumstances produced upon the witness stand. Likewise, the number of acquittals or convictions that may have been obtained in this court on prior occasions, or as to what the public might think about your verdict in this case is entirely immaterial. You are not concerned with how many convictions have been obtained or how many acquittals have been obtained in the past. You are concerned solely and only with the one question of whether or not the evidence in this case proved beyond every reasonable doubt the guilt of these defendants, and if it does you should so find; if it does not, you should find them not guilty.

2812 Likewise, briefly, when an attorney files an assignment on behalf of an assignee it is the duty of that attorney to act honestly, to acquire all of the assets of that estate on behalf of that assignee and to defend any claims that are not just claims against that estate. In other words, an attorney representing an assignee must act fairly, openly, aboveboard and honestly.

So in conclusion, ladies and gentlemen, as I said in the opening, you shall be influenced now by nothing in the world other than the evidence that you have heard and the instructions I have given you. You are not concerned with sympathy, malice or ill-will. You are not
2813 concerned with the manner in which evidence was obtained. The only thing that you are concerned with is whether or not from the evidence that has been admitted for your hearing and your consideration, has convinced you beyond every reasonable doubt that these defendants are guilty. If it has and if you believe from this evidence beyond every reasonable doubt that these defendants entered into a conspiracy to defraud, and by the use of the Bankruptcy Act, as I have hereinbefore charged you, then you should convict them. If, on the other hand, you have a reasonable doubt in your minds as to whether that is true or not, then
2814 you should turn them loose.

Let me say to you that nothing I have said, no tone of my voice or any act of mine has been intended to indicate to you in the slightest how I feel that the case ought to be decided. It is your province to determine from this evidence whether these defendants have been shown to be guilty or innocent. It is not mine, and I have not intended to indicate by any emphasis on any part of the evidence, if I have referred to the evidence or anything else, how I feel about the case. It is solely your province. It takes all twelve of you to agree upon a verdict. As long as one of you entertains a reasonable doubt as to the guilt

of a defendant, it is your duty to vote for an acquittal. 2815
If all of you entertain a reasonable doubt, it is your duty to acquit them. If none of you have a reasonable doubt, it is your duty to convict.

I will charge you this: There must be an agreement between two or more persons to commit a conspiracy. You are not trying Schulman or Goldman or either one of them for committing the specific act of using the Bankruptcy Court to defraud. You are trying them for an unlawful agreement and there must be an agreement between two or more persons. If you believe that Schulman attempted to defraud or if you believe that Goldman attempted to defraud or if you believe that Teddy Goldman 2816
attempted to defraud or if you believe that Hoffman attempted to defraud but not in furtherance of any conspiracy or by virtue of any conspiracy, you could not convict them. There must be an agreement. It takes two or more people to have an agreement. You could convict any one of the defendants, you could convict two of them or all of them. As I say, it takes all twelve of you to reach a verdict.

Any further requests for instructions from the Government?

Mr. Walsh: No, if your Honor please.

The Court: Any requests for instructions by any of the 2817
defendants?

Mr. Corbin: If your Honor please, the defendants Goldman regard the charge as eminently fair and take no exception whatsoever. There is this, by way of an additional instruction, if your Honor will hear me briefly.

The Court: Yes.

Mr. Corbin: In reading from the indictment I think you reached a point just this side of the factual gravamen of the charge which is—and I ask your Honor to read enough, to read the few words following where you stopped, which ends "knowingly and fraudulently stating to the

2818 creditors"—shall I just read that? It is the end of that paragraph.

The Court: Do you have the page it is on, Mr. Corbin?

Mr. Corbin: It is on page 3 of it, the end of the second paragraph on the page, the second paragraph "knowingly and fraudulently stating to the creditors."

The Court: Yes; all right. I certainly did not intend to mislead the jury.

Mr. Corbin: No, I don't mean that.

The Court: Yes, I understand, Mr. Corbin. I will complete that paragraph beginning with "and that the defend-
2819 ants would knowingly and fraudulently receive and attempt to obtain from the said Robert Hoffman a promise to join with the defendants in a sale of the assets of Paul Hymowitz, the alleged bankrupt, and to join with the defendants aforesaid in knowingly and fraudulently stating to the creditors that the price to be received for the assets aforesaid was about $1500 while the true price at which the defendants would sell to persons to the Grand Jurors unknown the assets of Paul Hymowitz, the alleged bankrupt, was to be higher, to wit, about $1900; and that the defendants and Robert Hoffman would receive and attempt to obtain the difference between the two sums, to wit,
2820 about $400; and that Robert Hoffman, the attorney aforesaid, would promise to join in this plan."

Mr. Corbin: That is all. And that is, if your Honor feels you should tell the jury that is the gravamen of the essential of the fraud charged in this indictment.

The Court: Yes, I will tell the jury that. That is the gravamen of the fraud that is attempted to be charged in this indictment. However, I will charge you this, that it is not necessary that it be exactly $400 or $300 or $500. If there was an unlawful agreement on the part of all of the defendants to defraud the creditors, and with the intent to defraud, that they would have the bankruptcy

petition filed and then withdrawn with the view in mind 2821
of defrauding the creditors and with the intent to defraud them, then they would be guilty. But if you have in your minds a reasonable doubt as to whether that is true or not, then you should find them not guilty.

Mr. Fielding: The defendant Schulman has no exception to that charge.

Mr. Walsh: If your Honor please, in view of what Mr. Corbin said, will you—

(Mr. Walsh hands paper to the Court.)

The Court: Yes. I am requested by the Government now, in view of having read another part of the indictment, to read an overt act. I won't read the indictment as to 2822
an overt act. There are some seven or eight of them charged as having been committed in furtherance of the conspiracy. I will say this, however, as I have heretofore charged, that if one of the overt acts were committed by one of the defendants after the formation of a conspiracy, then all would be guilty and it is not necessary that all participate in the overt act. It is necessary that there be an unlawful agreement to commit a crime against the United States and that thereafter in furtherance of the conspiracy one overt act be committed by one of the defendants, if that is done and it is shown beyond every 2823
reasonable doubt to have been done, then you should find the defendants guilty. If, on the other hand, you have a reasonable doubt in your minds as to whether that was done or not, then you should find the defendants not guilty.

Mr. Walsh: There is one more part there, if your Honor please.

Mr. Corbin: Well, can't we consent that they take the indictment with them?

The Court: Yes, I will let them take the indictment with them. I had thought I had made this clear but I will

2824 charge it again, that the conspiracy may be proved even though the money was not divided. I will charge you that, ladies and gentlemen, if you believe that a conspiracy was entered into and that an overt act was committed in furtherance of it and with the intent to carry out the purposes of the conspiracy, then it would be immaterial whether money was actually received and divided or not. It is a question of entering into a conspiracy, an unlawful agreement to commit the crime and then doing an overt act in furtherance of that conspiracy. Again I say that if you believe from the evidence beyond every reasonable doubt in this case that that was done, you should find them
2825 guilty as charged. If, on the other hand, you have a reasonable doubt in your minds as to whether or not they are guilty, it is your duty to acquit them.

Mr. Corbin: Thank you.

The Court: You may retire.

(Whereupon the jury retired at 3:35 P. M.)

The Court: Before the parties to this case leave, I am going to say I will be here until 10 o'clock tonight, if the verdict should come in. You may go to your respective offices if you wish but before you do leave word with the marshal where you may be found in the event that the
2826 jury reaches a verdict so that you may be called.

(At 3:55 P. M. the following note was sent in by the jury:)

"Indictment, FBI complete transcripts, bills of sale to L. Wein and A. Rothlein petition in bankruptcy."

The Court: There are some exhibits they asked for.

Mr. Walsh: Yes. We will confer and then bring them up to you.

(Short recess.)

Mr. Walsh: If your Honor please, in reply to the note received from the jury, Mr. Warren C. Fielding, Mr. Harold Corbin and myself have agreed that the papers I now

hold in my hand are: A copy of the original indictment with the back removed; Exhibit 21-A; Exhibit 20-A; Exhibit 19-A; Exhibit 18-A; Government's Exhibit 8, which is the bill of sale to Wein, and the bill of sale to Rothlein in the amount of $1500; and Government's Exhibit 3 in evidence, which is the original petition filed in this court. 2827

I am now handing them to the clerk.

The Court: Very well.

Mr. Walsh: Is that correct?

Mr. Fielding: Right.

Mr. Walsh: Both Mr. Fielding and Mr. Corbin say that is right.

(Exhibits sent in to the jury.) 2828

(At 6:25 P. M. the jury returned to the courtroom where the following proceedings were had:)

(The jury was polled.)

The Clerk: Madam Forelady, has the jury agreed upon a verdict?

The Forelady: They have.

The Clerk: How do you find?

The Forelady: We find all three defendants guilty as charged.

The Clerk: You may be seated. Ladies and gentlemen, listen to your verdict as it stands recorded. You say you find the defendants Martin M. Goldman, Theodore Goldman and Jacob P. Schulman guilty as charged; and so say you all? 2829

Jurors: Yes.

The Court: Ladies and gentlemen, before I discharge you let me say to you I appreciate your patience and also your willingness in having come earlier and remained later at some inconvenience to yourself in order to accommodate me. I thank you very much. I have enjoyed my trip up here to New York with you.

You may be excused for the term.

2830 The Forelady: Thank you.

(The jury left the courtroom.)

The Court: Let the defendants come around.

Mr. Corbin: Do you want motions?

The Court: Yes, I will take motions before I impose sentence.

Mr. Corbin: I think we should have the usual motions, to set aside the verdict on the ground that as a matter of law the evidence raises a reasonable doubt, that the verdict is contrary to the evidence and the weight of the evidence.

The Court: Let the motion be overruled.

2831 Mr. Fielding: I make the same motion on behalf of the defendant Schulman.

The Court: Let the motion be overruled.

Mr. Fielding: Exception.

Mr. Corbin: Exception.

The Court: Very well. Let the defendants step up.

Do you have anything further to say before sentence is imposed?

Defendant Martin Goldman: No.

Defendant: Theodore Goldman: No.

Defendant Schulman: I do, if your Honor please.

The Court: Very well.

2832 Defendant Schulman: I of course must abide by the wisdom of the jury's verdict. I can't complain I did not have a fair trial but I will say this: Every client that I have had since 1937 and thereafter, that is, since 1937 and since this matter was being investigated, still believes in me, in my integrity and in my confidence. I haven't lost one client to this very day. All these clients, particularly in the same line of business, have been giving me professional business. I can't understand this verdict. I think it is a miscarriage in some way I of course come back to the original proposition that I think I have received

a fair trial at your Honor's hands and at the jury's hands. 2833

The Court: Well, gentlemen, it is very painful of course for a judge to have to impose sentence, particularly to me, upon members of the Bar. The jury has acted upon the evidence and have found you guilty and there is nothing else for the Court to do other than impose sentence. Some judges probably would impose the maximum sentence because you are lawyers; you have been convicted of this crime. Some judges probably would impose a smaller sentence than I intend to impose, but I might say that I have given this matter serious thought throughout the entire trial, and to adjourn sentence to a later date, which of course has not been asked for, but if I did not have my 2834 mind definitely made up after having heard the entire case I would do so, but there is nothing to be gained by postponing it. If I were to call for a probation report it wouldn't change what I have in mind because I am assuming that you lawyers have borne good reputations prior to this time. You are intelligent lawyers. You have demonstrated that throughout the trial of this case. The jury has found you guilty, however, and I must act upon the presumption that you are guilty and in view of the fact that the jury has found you guilty, and assuming that you are, I am going to impose a fine of $25, sentence you to the penitentiary for a period of 18 months, someone to be 2835 designated by the Attorney General and remit the fine. I am not imposing the maximum sentence because I realize that the conviction is going to carry a severe sentence within itself, the loss of practice that you will suffer by reason of the fact that you are confined and you are deprived from the profession that you have chosen for your life, one that is a very worthy profession and one that is always my purpose to endeavor to uphold.

In your own conscience you know whether you are guilty or not. If you are, when you are released from the peni-

2836 tentiary, if you should ultimately go there, and if you come back after a certain length of time I take it that the Court can reinstate you as members of the Bar if you show yourselves worthy to be members. I have seen disbarment cases; I have seen lawyers disbarred for what I concede to be more heinous offenses than the one with which you are charged here, but after a certain period were permitted to be reinstated. I know particularly one lawyer who was disbarred for a very heinous crime: Extortion of $80,000. He was a very brilliant fellow and he took his punishment. After a period of some two or three years, by his course of conduct during that time, he was
2837 able to show that he had so rehabilitated himself that the Court did reinstate him as a member of the Bar. He has made good. He is a high-class lawyer now. His work is accepted, and so you men may be in that class. It depends upon you.

It is not a pleasure for me to impose sentence upon you. I might say this, that if counsel for the defendants desire to make a motion for a new trial, I would rule upon it immediately, but I think this is a case where if you decide to appeal that you do have one substantial question in the case, that would justify the Court in permitting you to remain on bail during the pendency of the
2838 appeal, but at any rate, that would be the sentence of the Court at this time.

Defendant Schulman: May I ask your Honor this: I for one have had a very small practice. In view of this trouble and the mental anguish that I have gone through and the reduction to practically zero of my present income, I state to your Honor this, I have no intention now to ever re-establish myself in the legal profession, beautiful or good as it may be. All my present plans are now to simply seek employment in any place that I can get and I don't know just where I can get it, except that there

is one possible source of employment that I have in mind now. If your Honor will be good enough to suspend sentence or to minimize that sentence it will simply mean that I will get the job and be able to provide for my wife and children. I have no intentions to getting back into the legal profession. God knows it has been a struggle all along. 2839

The Court: Well, as much as I would like to I would not be justified in suspending the execution of the sentence. It is very painful to the Court, who has been an active practitioner himself, to impose sentence. Of course, I have a duty to perform and if I should suspend sentence in this case I would feel like going back to Mississippi, opening up the bars of those that I have imposed sentence upon, who are less brilliant than either of you, who are less fortunate in the economic affairs of life and whose crimes are not as great as this, so I will have to deny your request for probation. 2840

Defendant Schulman: Will you Honor minimize that sentence to something, to some period that your Honor with some employment of mercy, so that at the time after, let us say, I am deprived of making a living that period should be shortened so that my three children shouldn't be in want. My economic conditions are not such that they will be free from want in the absence of earning capacity. 2841

The Court: I would not be justified in reducing the sentence any. I deliberated upon the question of whether or not if the jury brought in a verdict of guilty I should impose a maximum sentence of two years with a heavier fine. I reached this conclusion after mature judgment. I will say this to all of you, that when you become eligible for parole, very probably I would recommend a parole unless the Government showed me sufficient facts as a background, which of course could not have been brought to the attention

2842 of the Court, that would justify me opposing a parole. You men if you be guilty, and the jury have so found, have made a serious mistake, one probably that you had not given proper consideration to the acts or to the conduct of which you have been found guilty. If there isn't anything in the background which shows that this has been a studied plan over a period of years and that you have had a bad reputation all along this line, I would say this, that I would recommend a parole.

I might say further to you that as long as your Parole Board is constituted as it is, my recommendation carries some weight with it because I don't recommend a parole
2843 in every case. I happen to be a schoolmate with one of the members of the Parole Board, not only a schoolmate but a very intimate friend, and I have discussed questions of parole with him from time to time. I am a believer in probation in proper cases to a certain extent. In a reasonable number of cases I am a believer in parole. So when men have had opportunity to think the situations over and also to suffer the punishment for the crimes, may still come out and be rehabilitated under the supervision of the parole officer, so that the best that I can say to you at this time is that if you ultimately are carried to the
2844 penitentiary, after you shall have served one-third of your time, you will be eligible for parole. If at that time you make application and there isn't some showing of a background why it should not be recommended, why, I would recommend parole but I won't pass on that question at this time but simply advise you how I feel toward you.

Mr. Corbin: May we have a continuance of bail pending appeal, Judge?

The Court: Yes. Now the defendants may be seated.

Let me ask you this, Mr. Corbin: Do you intend to file a motion for a new trial?

Mr. Corbin: Well, yes. But I take it from what you said that you do not want any argument on it? 2845

The Court: No, sir, I do not. I have studied all of these questions. If you insisted I would hear you but my mind is rather firmly fixed that no errors have been committed. You do, however, have a substantial question there. I think my decision was correct on it but it is one that I wouldn't change it on unless a later case deciding the specific question were presented to me, showing that I was in error. It is a question that ought to be passed upon by an appellate court and will be passed upon by an appellate court; as I say, I think that my decision would be upheld but I can see where the Court probably 2846 could carry the doctrine of an unreasonable search just a little further than it has but I don't believe that it will.

Mr. Corbin: Well, suppose then that I record that motion now.

The Court: I was going to say if you do that I will pass on it now, and I will state to you now without hearing from the Government that I would grant these defendants bail pending their appeal because I have had all these matters argued out before me on other occasions and am thoroughly familiar with what the law is on that and have adopted a policy of my own in accordance with what I conceive the rules to be, and that is, if an appeal is frivolous, there isn't any likelihood of any error appearing in the case, I deny bail; but where they do have a substantial question, one that I am not certain absolutely in my own mind—and I think that the defendants will be present to answer the judgment of the appellate court if it go against them—then I allow bail. So if you desire to make a motion at this time, I will entertain it and rule upon it. 2847

Mr. Corbin: Under those circumstances I so move and assure your Honor that within five days we will file our notice of appeal.

2848 Mr. Fielding: I make a similar motion for the defendant Schulman.

The Court: For a new trial?

Mr. Fielding: For a new trial.

The Court: Very well. Let the motion for a new trial be overruled.

Mr. Fielding: Exception.

Mr. Corbin: And may the bail in the present amount remain? I really don't know what it is.

A Voice: $500.

The Court: How much is it?

Mr. Corbin: $500. It has been that right along.

2849 The Court: I think that a larger bail should be given. I take it that they can give a larger bail. I think that bail, pending the appeal, should be fixed at $1500, if they can get it, and I would parole them to your custody, in the custody of Mr. Fielding, and give them until Monday in which to prepare that bail.

Mr. Fielding: I am quite sure $1500 bail would be quite a burden for Mr. Schulman. There is no possible chance of his leaving the jurisdiction.

The Court: You do not think he can give $1500 bail?

Mr. Fielding: I doubt it, sir.

2850 The Court: Very well, I will fix his bail at $1000. I will fix the bail for each of the other defendants at $1000 and parole them in the custody of you gentlemen if you will accept it.

Mr. Fielding: I will accept it.

The Court: You will accept it?

Mr. Fielding: Yes.

The Court: Until Monday to fix the bail pending appeal.

Mr. Fielding: And the bail can be supplied any time Monday up until four o'clock?

The Court: Any time Monday up until four o'clock.

Mr. Fielding: Fine.

Colloquy.

The Court: I might say this, in fixing bail I have in 2851
mind two things: One is whether or not the defendant will attempt to flee the jurisdiction, and the second is that nowadays it is almost impossible for a defendant to escape the Federal Bureau of Investigation perpetually. He may rest assured that if he commits a crime against the United States it is going to be detected within a reasonable time.

I might say just as a matter of information—you need not take this.

(Discussion off the record.)

The Court: Very well. It won't be necessary, gentlemen, for me to be here further. You can file your assign-
ments of errors and notice of appeal, all those things 2852
with the clerk, and any other judge can act upon them because I have already fixed the bail pending an appeal, allowed an appeal, and if you don't press it, then of course the Government can take certain steps necessary to have the defendants incarcerated.

Mr. Corbin: Thanks again, Judge, for every courtesy.

The Court: You are quite welcome.

The Court will recess until Monday morning at 10:30.

2853

EXHIBITS USED UPON PRELIMINARY HEARING.

2854

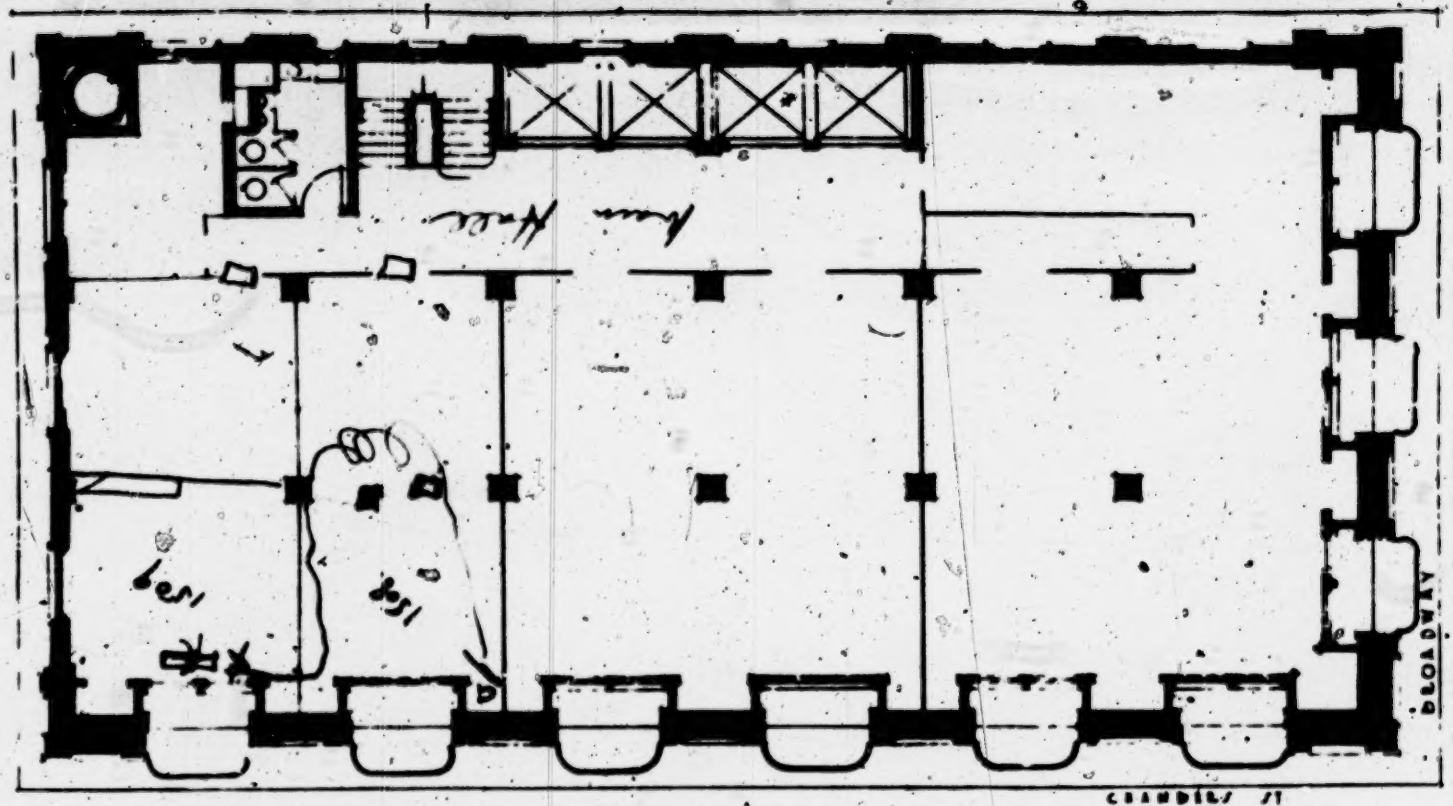
Petitioners' Exhibit 1.

Diagram.

(Opposite) ☞

2855

2856



277 BROADWAY — 15TH & 16TH FLOORS
NEW YORK CITY
SCALE 1/8"-1'-0"

BUTLER & BALDWIN, INC.
REAL ESTATE

Petitioners' Exhibits 2 to 5 for Identification.

2860

Notes and Report (omitted).

Petitioners' Exhibit 6.

Affidavit of Harold P. Turner (same as printed in full at pages 41-42, folios 121-125, herein).

2861

Government's Exhibit A for Identification.

Book (omitted by consent).

Government's Exhibit B for Identification.

Affidavit of Albert E. Frost (same as printed in full at pages 35-37, folios 104-111, herein).

2862

EXHIBITS USED UPON THE TRIAL.

2863

Government's Exhibit 1.

THIS INDENTURE, made this 22nd day of March in the year one thousand nine hundred and thirty-seven BETWEEN PAUL HYMOWITZ residing at No. 105 West 168th Street in the Borough of Bronx, County of Bronx, City of New York, in the State of New York, doing business under the name of Paul Hymowitz and now carrying on the business of retail sale of men's wearing apparel and general merchandise at No. 346 Bowery, in the Borough of Manhattan, New York County in the City and State of New York party of the first part and SAMUEL S. KOLMAN, 2864
residing at No. 767 Crown Street, in the Borough of Brooklyn, County of Kings, City and State of New York, party of the second part, WITNESSETH, That whereas the party of the first part is indebted to divers persons in sundry sums of money, which he is unable to pay in full, and is desirous of providing for the payment of the same, so far as is in his power, by an assignment of all his property for that purpose:

NOW, THEREFORE, The said party of the first part, in consideration of the premises and of the sum of one dollar to him paid by the party of the second part, upon the 2865
ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over, unto the party of the second part his successors and assigns, all and singular the lands, tenements, hereditaments, appurtenances, goods, chattels, stock, promissory notes, claims, demands, property and effects of every description belonging to the party of the first part, wherever the same may be, except such property as is exempt by law from levy and sale

2866 under an execution. To have and to hold the same, and every part thereof, unto the said party of the second part, his successors and assigns:

IN TRUST, NEVERTHELESS, to take possession of the same, and to sell the same with all reasonable dispatch, and to convert the same into money, and also to collect all such debts and demands hereby assigned as may be collectible, and with and out of the proceeds of such sales and collections, to first pay and discharge all the just and reasonable expenses, costs and charges of executing this assignment, and of carrying into effect the trust hereby created, together
2867 with the lawful commission of the party of the second part for his services in executing said trust; THEN

AND then to pay and discharge in full, if the residue of said proceeds is sufficient for that purpose, all the debts and liabilities now due or to grow due from the said party of the first part, with all interest moneys due or to grow due thereon; and if the residue of said proceeds shall not be sufficient to pay the said debts and liabilities and interest moneys in full, then to apply the said residue of said proceeds to the payment of said debts and liabilities ratably and in proportion.

2868 AND if, after the payment of all the said debts and liabilities in full, there shall be any remainder of residue of said property or proceeds, to repay and return the same to the said party of the first part, his executors, administrators or assigns.

AND, in furtherance of the premises, the said party of the first part does hereby make, constitute and appoint the said party of the second part his true and lawful attorney, irrevocable, with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trust hereby created, and to ask, de-

mand, recover and receive of and from all and every person 286
or persons all property, debts and demands due, owing and belonging to the said part of the first part, and to give acquittances and discharges for the same; to sue, prosecute, defend and implead for the same; and to execute, acknowledge and deliver all necessary deeds, instruments and conveyances. And the said party of the first part hereby authorizes the said party of the second part to sign the name of the said party of the first part to any check, draft, promissory note or other instrument in writing which is payable to the order of the said party of the first part, or to sign the name of the party of the first part to any instrument in writing, whenever it shall be necessary so to do, 287
to carry into effect the object, design and purpose of this trust.

THE said party of the second part does hereby accept the trust created and reposed in him by this instrument, and covenants and agrees to and with the said party of the first part that he will faithfully and without delay execute the said trust, according to the best of his skill, knowledge and ability.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above 287
written.

Witness as
to Paul Hymowitz

R. Hoffman

Paul Hymowitz (L. S.)
Paul Hymowitz

Samuel S. Kolman (L. S.)
Samuel S. Kolman

Government's Exhibit 1.

2872 State of New York,
County of New York—ss.:

On this 22 day of March in the year one thousand nine hundred thirty-seven before me personally came PAUL HYMOWITZ to me known, and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged that he executed the same.

Robert Hoffman
Notary Public
7873 New York County
N Y Co Clks No #239
Term Exp. 3/30/37

State of New York,
County of New York—ss.:

On this 24 day of March, in the year one thousand nine hundred thirty-seven before me personally came SAMUEL S. KOLMAN to me known, and known to me to be the individual described in and who executed the foregoing
2874 instrument, and duly acknowledged that he executed the same.

Meyer Parolnick
Notary Public Queens County
Queens Co Clerks 2711
N Y Co Clerks #498
Term Exp 3/30/38

Government's Exhibit 1.

(On Reverse Side) 2875

FEE PAID $3.00
MAR 24 1937
COUNTY CLERK N. Y. CO.
By
Cashier

CERTIFIED COPY ISSUED
Fee paid 2.40
Date 3/24/37
County Clerk, N. Y. Co. 2876
By

FILED
RECORDED
Mar 24 11:54 AM 37
COUNTY CLERK
NEW YORK COUNTY

2877

Government's Exhibit 2a.

2878

At a Special Term, Part II, of the Supreme Court of the State of New York, held in and for the County of New York, at the Court house, in the Borough of Manhattan, City of New York, on the 24th day of March, 1937.

Present: HON. CHARLES B. MCLAUGHLIN, *Justice*.

In the matter of the general assignment for the benefit of creditors of

2879

PAUL HYMOWITZ

to

SAMUEL S. KOLMAN,

Assignee.

Upon reading and filing the annexed petition of SAMUEL S. KOLMAN, the assignee herein, and it appearing to my satisfaction that the assignor's estate is valued at about $1,500.00, it is, now on motion of ROBERT HOFFMAN, attorney for the assignee,

2880

ORDERED, that SAMUEL S. KOLMAN, the assignee herein, qualify under a provisional bond, duly approved by one of the Justices of this Court, in the sum of $1,500.00/100 for the faithful performance of his duties as such assignee, and it is further,

ORDERED, that upon the filing of the provisional bond herein, the assignee be and he hereby is permitted to sell the assets of the assignor at public auction, except book accounts and bills receivable, giving the creditors ten days notice by mail, and by advertisement published in the New

Government's Exhibit 7a.

York Law Journal, at least ten days prior to the day of sale, and that such sale shall be had within fifteen days after the entry of this order authorizing same, unless in the meantime an order of this Court has been obtained granting an extension of the time for such sale. 2881

ENTER

C. B. McL.
J. S. C.

SUPREME COURT,

NEW YORK COUNTY. 2882

In the matter of the general assignment for the benefit of creditors of

PAUL HYMOWITZ

to

SAMUEL S. KOLMAN,

Assignee.

TO THE SUPREME COURT OF THE COUNTY OF NEW YORK: 2883

The petition of SAMUEL S. KOLMAN, respectfully shows:

That he is the assignee herein; that he resides at No. 767 Crown Street, in the Borough of Brooklyn, City of New York. That on the 22nd day of March, 1937, an assignment of all the assets and property of PAUL HYMOWITZ, formerly conducting the business of army and navy goods at No. 346 Bowery, in the Borough of Manhattan, City of New York, was duly executed to your petitioner in

Government's Exhibit 2a.

2884 trust for the benefit of creditors herein. That said assignment was duly filed and recorded in the office of the Clerk of New York County, on the 24th day of March, 1937.

That no petition in bankruptcy has been filed by or against the above named assignor.

That your petitioner desires to qualify under a provisional bond, in order to dispose of the property herein immediately.

That your petitioner desires to have an immediate sale of the assets in his possession in order to save the expense of insurance and rent necessarily incurred in care of the said assets.

2885 That your petitioner has caused to be made an examination of the entire assets and has been informed and verily believes upon investigation of the same, that the entire assets, consisting of army and navy goods, fixtures, etc., are of value of about $1,500.00.

That annexed hereto and made part hereof is a list of the assets of the above named assignor, now in possession of your petitioner as assignee herein.

WHEREFORE, your petitioner respectfully prays for the annexed order for which no previous application has been made herein.

2886

Dated, New York, March 24, 1937.

Samuel S. Kolman

Government's Exhibit 2a.

City, County & State of New York—ss.: 2887

SAMUEL S. KOLMAN, being duly sworn, deposes and says: That he is the petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

Samuel S. Kolman

Sworn to before me this
24th day of March, 1937. 2888

Meyer Parodnick
Notary Public
N. Y. Co. Clk's #498
Term Exp. 3/30/38

2889

Government's Exhibit 2a.

2890 INVENTORY

18 work shirts
18 union suits
17 zipper shirts
4 zipper sweaters
5 slip-overs
16 shirts
22 work gloves
10 suspenders
9 gloves
10 caps
2891 30 pr silk socks
35 pr socks
21 " "
5 overalls
13 pr work pants
1 pr. breeches
4 galoshes
15 work shirts
3 balbriggans
7 union suits
12 athletic shirts
13 polo shirts
2892 7 overalls
12 shorts
46 caps
108 pr shoes
32 " "
24 " "
6 " "
26 " "
17 " "
12 " "
40 overalls
18 " "
40 pr hose
160 " "
32 sweaters
120 gloves
32 shirts
45 balbriggans
40 "
6 rubbers
24 sneakers
18 sweaters
12 gloves
35 high shoes
12 overalls
22 pr arctics
27 shirts
142 rubbers
28 shirts
11 union suits
25 pr rubbers
36 pcs underwear
54½ doz hose
230 shirts
20 union suits
4 union suits
17 " "
10 " "
36 shirts
48 shorts
22 pcs underwear
19 pcs "
20 pr arctics
14 shirts
5 leather coats
14 sweaters

Government's Exhibit 2

5 shirts
15 pants
15 "
18 overalls
13 pants
9 shirts
5 shirts
30 pants
10 pants
7 overalls
6 slip overs
8 overalls
35 overalls
12 "
4 pants
18 overalls
4 pr boots

16 coats
12 shirts
9 shirts
15 slippers
2 coats
14 slippers
40 polo shirts
12 pr gloves
7 pr gloves
85 pr gloves
20 shirts
20 shirts
8 shirts
1 counter
1 show case
1 show case
1 National cash register

Mortgage-Bal. Due $60.00

2893

2894

2895

Government's Exhibit 2a.

2896

Index No. 12-415

SUPREME COURT.

NEW YORK COUNTY.

In the matter of the general assignment for the benefit of creditors of

PAUL HYMOWITZ

to

2897

SAMUEL S. KOLMAN,

Assignee.

Original

PETITION AND ORDER FOR PROVISIONAL BOND AND SALE

ROBERT HOFFMAN
Attorney for Assignee
Office and Post Office Address.
1270 Broadway
Borough of Manhattan New York City.

2898

To Esq.

Attorney for

Due and timely service of a copy of the within is hereby admitted.

Dated, N. Y., 193

Attorney for

(Stamped)—MAR 26 1937

Government's Exhibit 2b.

2899

SUPREME COURT,

NEW YORK COUNTY.

In the matter of the general assignment for the benefit of creditors of

PAUL HYMOWITZ

to

SAMUEL S. KOLMAN,

Assignee. 2900

TO THE CLERK OF THE SUPREME COURT, SPECIAL TERM, PART II.

SIR:

PLEASE TAKE NOTICE, that I appear in this proceeding as attorney for the assignee, pursuant to the annexed retainer, duly executed and acknowledged.

Dated, New York, March 24, 1937.

Robert Hoffman

2901

City, County & State of New York—ss.:

On the 24th day of March, 1937, before me came ROBERT HOFFMAN, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same.

Meyer Parodnick
Notary Public
N. Y. Co. Clk's #498
Term Exp. 3/30/38

Government's Exhibit 2b.

2902

SUPREME COURT,

NEW YORK COUNTY.

In the matter of the general assignment for the benefit of creditors of

PAUL HYMOWITZ

to

SAMUEL S. KOLMAN,

Assignee.

2903

I, SAMUEL S. KOLMAN, as assignee of PAUL HYMOWITZ, under an assignment made the 22nd day of March, 1937, do hereby retain ROBERT HOFFMAN, as my attorney in this proceeding.

Dated, the 24th day of March, 1937.

Samuel S. Kolman

City, County & State of New York—ss.:

2904

On the 24th day of March, 1937, before me came SAMUEL S. KOLMAN, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same.

Meyer Parodnick
Notary Public
N. Y. Co. Clk's #498
Term Exp. 3/30/38

Government's Exhibit 2C.

2905

At a Special Term, Part II of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, Pearl and Centre Streets, Borough of Manhattan, City of New York, on the 19th day of November, 1937.

Present: HON. ARON STEUER, *Justice*.

In the Matter of the General Assignment for the Benefit of Creditors of 2906

PAUL HYMOWITZ

—to—

SAMUEL S. KOLMAN,

Assignee.

Upon reading and filing the annexed affidavit of Samuel S. Kolman, the assignee herein, duly sworn to the 18th day of November, 1937, and it appearing that the assignee's final report and account has been filed in this proceeding, and upon all the proceedings heretofore had herein, 2907

Now, on motion of Robert Hoffman and Goldman, Malter & Goldman, attorneys for the assignee, it is

ORDERED that notice issue herein to all creditors named in the schedules filed in this Court by the assignee, and to all creditors who have filed their claims with the assignee, and to the assignor and the surety on the assignee's bond, and to all parties interested in the Estate, of the time and place of filing the assignee's account and of the hearing thereof at Special Term, Part I of this Court, to be held at

2908 the Courthouse thereof, at Pearl and Centre Streets, in the Borough of Manhattan, City and State of New York, on the 7th day of December, 1937, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at which time and place they shall show cause why the assignee should not be permitted to settle the claim of the assignor against the Emergency Relief Bureau of the City of New York, in the sum of Two hundred ($200.00) Dollars, and why said settlement should not be allowed and approved, and why a further order should not be made permitting the assignee to settle the claims of the City of New York for taxes in the sum of Three hundred eight and 46/100
2909 ($308.46) Dollars, and why said settlement should not be allowed and approved, and why the account of the assignee as filed herein should not be settled and allowed, and why such other, further and different relief should not be granted as to this Court may seem just and equitable, and it is further

ORDERED that service of the foregoing notice be made by mailing a copy of said notice to each of the creditors who have filed their claims with the assignee and to all creditors who appear in the schedules filed in this Court by the
2910 assignee, and to the assignor, and to the surety on the bond of the assignee, and to all parties interested in the Estate, with postage thereon prepaid, so that notice shall be received by them at least ten (10) days before the return date of said motion, with envelopes endorsed as specified in Special Term Rule 12, Subdivisions 14 and 27.

Enter,

A. S.
J. S. C.

971

Government's Exhibit 2c.

SUPREME COURT 2911

OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

In the Matter of the General Assignment for the Benefit of Creditors of

PAUL HYMOWITZ

—to—

SAMUEL S. KOLMAN,

Assignee. 2912

State of New York,
City of New York,
County of New York—ss.:

SAMUEL S. KOLMAN, being duly sworn, deposes and says: That he is the assignee herein.

That on the 22nd day of March, 1937, the above named assignor made, executed and delivered a general assignment of all his assets and property for the benefit of his creditors to your deponent. 2913

That said assignment was filed in the office of the Clerk of the County of New York on the 24th day of March, 1937.

Deponent filed his bond, duly approved by a Justice of this Court, and duly qualified as assignee. That thereafter, deponent duly filed schedules.

That on the 22nd day of June, 1937, an order was granted by this Court authorizing deponent to advertise for the presentation of claims by the creditors. That thereafter, and pursuant to such order, deponent caused to be published an advertisement in the New York Law Journal,

2914 notifying all creditors to present their claims, with vouchers therefor duly verified, on or before July 27th, 1937.

That on the 25th day of June, 1937, a copy of said notice was mailed to all the creditors of the above named assignor.

That the time of the creditors to file their claims has expired.

On this application to pass and allow the assignee's account, deponent also respectfully asks for permission to settle the claim of the assignor against the Emergency Relief Bureau of the City of New York, which was in the
2915 sum of $225.50, for the sum of $200.00, and to approve and allow said settlement as made, and to permit the assignee to execute any and all necessary papers in the premises. The reason this claim was settled for the sum of $200.00 was because the assignor had gotten into difficulty with the authorities with respect to the relief vouchers, and the Bureau questioned the authenticity of the amounts.

Under the circumstances, deponent believes that such settlement is more than fair.

The Emergency Revenue Division of the Department of Finance of the City of New York filed a claim with the
2916 assignee against the assignor for City Sales taxes due for sums amounting to more than One thousand ($1,000.00) Dollars. The assignee opposed the claims, and a hearing was had thereon, at which hearing the amount was adjusted to the sum of $308.46. Said sum, in deponent's opinion, is a fair determination of the taxes due, and deponent respectfully asks that he be permitted to settle the claims of the City of New York for taxes in the sum of $308.46, and that said settlement be approved and allowed.

Deponent respectfully states that he will incur further disbursements in connection with this Estate in the sum

Government's Exhibit 2c.

of about Two ($2.00) Dollars, for postage for the mailing of notices to creditors of the filing of the account herein and for distribution of dividend checks to them, and deponent asks that said amount be allowed to him in addition to his fees. 2917

That to the best of deponent's knowledge, there are no suits pending nor is there any further duty upon the part of the assignee to perform except to have the account finally settled and distribution made.

That to the best of deponent's knowledge, there are no petitions in bankruptcy, either voluntary or involuntary, filed by or against the assignor herein at the present time. 2918

WHEREFORE, deponent prays that the annexed order be signed, and that notice issue to the creditors, the assignor and the surety on the assignee's bond, to show cause why they should not be required to attend the judicial settlement and final accounting, and why the settlement as made should not be approved and allowed, and why said account should not be settled and allowed and distribution made, and for such other and further and different relief as to this Court may seem just and equitable, for all of which no previous application has been made. 2919

Samuel S. Kolman

Sworn to before me this
18th day of November, 1937.

Meyer Parodnick
Notary Public
N. Y. Co. Clk's No. 498
Term Exp. 3/30/38

Government's Exhibit 2d.

2920

SUPREME COURT,

NEW YORK COUNTY.

In the Matter of the General Assignment for the benefit of the creditors of

PAUL HYMOWITZ.

Assignor.

—to—

SAMUEL S. KOLMAN.

2921

Assignee.

TO THE CLERK OF THE SUPREME COURT,
SPECIAL TERM, PART II:

SIR:

PLEASE TAKE NOTICE, that we appear in the proceedings as co-attorneys for the assignee, pursuant to the annexed retainer, duly executed and acknowledged.

Dated, New York, May 5, 1937.

2922

GOLDMAN MALTER & GOLDMAN
BY: Theodore Goldman
Robert Hoffman
Attorneys.

Government's Exhibit 2d.

State of New York,
County of New York—ss.: 2923

On the 5th day of May, 1937, before me personally appeared THEODORE GOLDMAN, a member of the firm of GOLDMAN, MALTER & GOLDMAN, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same as a member of the firm of GOLDMAN, MALTER & GOLDMAN.

Sanford Jarett
SANFORD JARETT 2924
Notary Public, New York County
New York Co. Clerk's No. 26, Reg. No. 8J27
Cert. filed in Kings Co. Clk's No. 62
Term Expires March 30, 1938

State of New York,
County of New York—ss.:

On the 5 day of May, 1937, before me personally appeared ROBERT HOFFMAN, to me known and known to me to be the individual mentioned and described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same. 2925

Meyer Parodnick
Notary Public
N. Y. Co. Clk's #498
Term Exp. 3/30/38

Government's Exhibit 2d.

2926

SUPREME COURT.

NEW YORK COUNTY.

In the Matter of the General Assignment for the Benefit of Creditors of

PAUL HYMOWITZ.

Assignor.

—to—

SAMUEL S. KOLMAN.

2927

Assignee.

TO THE CLERK OF THE SUPREME COURT,
SPECIAL TERM, PART II:

SIR:

I, SAMUEL S. KOLMAN, as assignee of PAUL HYMOWITZ under an assignment made the 24th day of March, 1937, and filed in the office of the Clerk of the County of New York on the 24th day of March, 1937, do hereby retain GOLDMAN, MALTER & GOLDMAN and ROBERT HOFFMAN, as my attorneys in these proceedings.

2928

Dated: New York, May 5, 1937.

Samuel S. Kolman
Assignee

Government's Exhibit 2d.

State of New York,
County of New York—ss.: 2929

On this 5 day of May, 1937, before me personally came SAMUEL S. KOLMAN, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Meyer Parodnick
Notary Public
N. Y. Co. Clk's #498
Term Exp. 3/30/38 2930

2931

Government's Exhibits 2d and 3.

Index No. 12-415.

2932

SUPREME COURT,

NEW YORK COUNTY.

In the Matter of the General Assignment for the Benefit of creditors of

PAUL HYMOWITZ,

Assignor,

—to—

SAMUEL S. KOLMAN,

Assignee.

2933

NOTICE OF APPEARANCE AND RETAINER

GOLDMAN MALTER & GOLDMAN and
ROBERT HOFFMAN
Attorneys for Assignee
Office and Post Office Address
302 Broadway
Borough of Manhattan New York City

To , Esq.
Attorney for

Due and proper service of a copy of the within
2934 is hereby admitted.

Dated, New York 193

Attorney for

FILED
Jun 1 1937
Assignment Bureau
New York Supreme Court

Government's Exhibit 3.
PHOTOSTAT OF PETITION.

(Opposite) ☞

2042B—Involuntary Petition in Bankruptcy

J. Morris Stationery & Printing Co., Inc.
515 Broadway, N. Y. 5811

BENCH AND BAR LAW BLANKS

UNITED STATES DISTRICT COURT.
SOUTHERN DISTRICT OF NEW YORK

In the Matter
of

PAUL HYMOWITZ

Alleged Bankrupt.

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

THE PETITION OF the undersigned

respectfully shows:

That PAUL HYMOWITZ, has

for the greater part of six months next preceding the date of the filing of this petition, had his principal place of business at No. 346 Bowery in the Borough of Manhattan City of New York County of New York and State of New York Southern District of New York and is neither a wage earner, nor a person engaged principally in farming or tillage of the soil or a municipal, railroad insurance or banking corporation and owe s debts in the sum of one thousand ($1,000) dollars or over and ha s been engaged in the business of selling men's wearing apparel at retail at 346 Bowery, New York City.

That your petitioners are creditors of said alleged bankrupt having provable claims against said alleged bankrupt amounting in excess to the value of securities held by them to over Five Hundred ($500) Dollars and that the nature and amount of your petitioners' claims and the securities held by them, if any, are as follows:

The claim of your petitioner ABRAHAM SCHWARTZ and SAMUEL ZUCKERMAN is [illegible] for goods, sold and delivered to the said alleged bankrupt within the past six months of the agreed price and reasonable value of upwards of $88.00

The claim of your petitioner NATHAN RIBACH and SAMUEL MANTIS is [illegible] for goods sold and delivered to the said alleged bankrupt within the past six months, of the agreed price and reasonable value of upwards of 117.00

The claim of your petitioner AARON KHEISELMAN, JACOB KHEISELMAN, and HARRY KHEISELMAN, copartners, trading as e. KHEISELMAN & SON is [illegible] for goods sold and delivered to the said alleged bankrupt within the past six months, of the agreed price and reasonable value of upwards of 158.00

The claim of your petitioner HARRY LEVY is [illegible] for goods sold and delivered to the said alleged bankrupt within the past six months, of the agreed price and reasonable value of upwards of $ 250.00

The claim of your petitioner is (upon an assigned claim) for the said bankrupt within the past six months value of upwards of $

Your petitioner further allege that the said alleged bankrupt while insolvent and within four months next preceding the filing of this petition and while insolvent as aforesaid, committed an act of bankruptcy in that he did the following acts:

1. That the alleged bankrupt with intent to hinder, delay or defraud his creditors and with intent and for the purpose of giving a preference contrary to the provisions of the Bankruptcy Act and upon pretended and alleged antecedent indebtedness claimed or alleged to be due from the said alleged bankrupt to divers persons, firms and corporations, transferred and set over unto said divers persons, firms and corporations whose names are unknown to your petitioners valuable property, consisting of money, merchandise, accounts and dues receivable of the value of $500.00 applicable to the payment of the debts of the said alleged bankrupt

2. That while insolvent as aforesaid the said alleged bankrupt transferred various moneys amounting in the aggregate to the sum of $ 500.00 to various of his creditors with intent thereby to prefer such creditors over other creditors of the same class, the names of such preferred creditors being unknown to your petitioners.

3. That said alleged bankrupt while insolvent suffered and permitted a creditor herein, to obtain a preference through legal proceedings and that said alleged bankrupt not vacated or discharged such preference within five days before a sale or final disposition of the property affected by such preference.

4. That said alleged bankrupt while insolvent, suffered and permitted a creditor herein, to obtain through legal proceedings a levy or (attachment) or (judgment) or (lien) and did not vacate or discharge same within 30 days from the date said was obtained

5. That on or about the day of 193 , while insolvent, and within four months next preceding the date of the filing of this petition, the alleged bankrupt admitted in writing inability to pay just debts in full and willingness to be adjudged bankrupt upon that ground, and that hereto annexed is a copy of said admission and made part hereof

6. That on or about the day of 193 the alleged bankrupt above named made an assignment for the benefit of Creditors, to which assignment was recorded in the office of the Clerk of the County of on the day of 193

7. That on or about the day of 193 , and while insolvent, was duly appointed Receiver or (Trustee) of the assets of the alleged bankrupt and was put in charge of his property by virtue of proceedings instituted in the Court

8 That there are more (less) than twelve creditors in number of said alleged bankrupt.

WHEREFORE, your petitioners pray that service of this petition with a subpoena may be made upon the said alleged bankrupt as provided by the Acts of Congress relating to Bankruptcy, and that PAUL HYMOWITZ may be adjudged by the Court to be bankrupt within the purview of said Acts.

Dated the 3rd day of April 1937

ABRAHAM SCHWARTZ and SAMUEL ZUCKERMAN, trading as SCHWARTZ AND ZUCKERMAN

BY Jacob P. Shulman
Attorney in Fact

NATHAN RIBACH and SAMUEL MANTIS, trading as RIBACH AND MANTIS

BY Jacob P. Shulman
Attorney in Fact

AARON KREISELMAN, JACOB KREISELMAN and HARRY KREISELMAN, copartners, trading as A. KREISELMAN & SON

BY: Jacob Kreiselman
Harry Kreiselman

JACOB P. SHULMAN
Attorney and Solicitor for Petitioners
Office and Post Office Address:
277 Broadway
New York City.

[redacted]

SOUTHERN District of NEW YORK

JACOB P. SHULMAN, being duly sworn, says: that he is the attorney in fact for SCHWARTZ AND ZUCKERMAN one of the petitioning creditors named and described in the foregoing petition does hereby make solemn oath that the statement contained in foregoing petition are true. That he is duly authorized to execute this petition as attorney in fact for SCHWARTZ AND ZUCKERMAN.

Jacob P. Shulman

Subscribed and sworn to before me this 3rd day of April 1937

Sanford Jarett

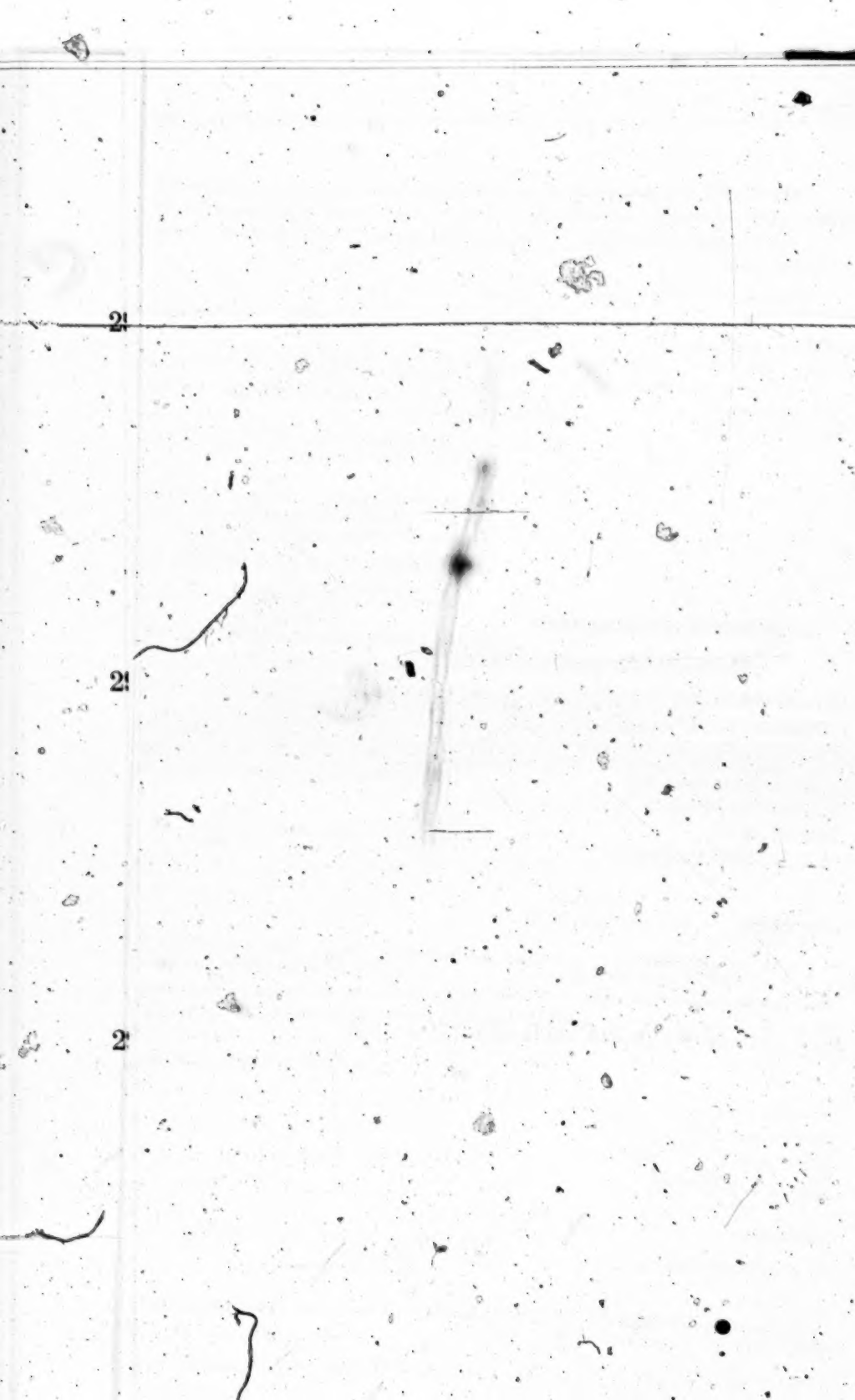
SOUTHERN District of NEW YORK

, being duly sworn, says: that he is a member of the copartnership trading as A. KREISELMAN & SON, one of the petitioning creditors named and described in the foregoing petition does hereby make solemn oath that the statement contained in foregoing petition are true. That he is duly authorized to execute this petition as a copartner of A. KREISELMAN & SON.

Jacob Kreiselman

Subscribed and sworn to before me this 3rd day of April 1937

Sanford Jarett
SANFORD JARETT



SOUTHERN DISTRICT OF NEW YORK:

JACOB P. SHULMAN, being duly sworn, says: that he is the attorney in fact for RIBACH AND MANTIS, one of the petitioning creditors named and described in the foregoing petition does hereby make solemn oath that the statement contained in the foregoing petition are true. That he is duly authorized to execute this petition as attorney in fact for RIBACH AND MANTIS.

Jacob Shulman

Subscribed and sworn to
before me this)
day of April, 1937.

SANFORD JARETT
NOTARY PUBLIC, NEW YORK COUNTY
New York Co. Clerk's No. 76, Reg. No. 8,327
Cert. filed in Kings Co. Clk's No. 62
Term Expires March 30, 1938

SOUTHERN DISTRICT OF NEW YORK:

HARRY LEVI being duly sworn, says: that he is one of the petitioning creditors named and described in the foregoing petition does hereby make solemn oath that the statement contained in the foregoing petition are true.

Subscribed and sworn to
before me this)
day of April, 1937.

Harry Levi

SANFORD JARETT
NOTARY PUBLIC, NEW YORK COUNTY
New York Co. Clerk's No. 76, Reg. No. 8,327
Cert. filed in Kings Co. Clk's No. 62
Term Expires March 30, 1938

UNITED STATES DISTRICT COURT
SOUTHERN District of NEW YORK

In the Matter of

PAUL HYMOWITZ

Alleged Bankrupt

INVOLUNTARY PETITION IN BANKRUPTCY

JACOB P. SHULMAN
Attorney for Petitioning Creditors,
277 Broadway,
N.Y.C.

67 875

APR 1937

Government's Exhibit 3.

2938 At a Stated Term of the United States District Court for the Southern District of New York, held at the Courthouse, located at Foley Square, in the Borough of Manhattan, City and State of New York, on the 3rd day of April, 1937.

Present: HON. ALFRED C. COXE, *District Judge.*

In Bankruptcy No. 67875.

2939 In the Matter

—of—

PAUL HYMOWITZ,

Alleged Bankrupt.

Upon reading and filing the annexed petition of Ribach & Mantis, by Jacob P. Shulman, its duly authorized attorney in fact, verified the 3rd day of April, 1937, and upon all the papers and proceedings heretofore had herein, it is on motion of JACOB P. SHULMAN, attorney for the petitioning creditors,

2940 ORDERED, that SAMUEL S. KOLMAN, assignee and his attorney ROBERT HOFFMAN, Esq., and GABRIEL WISHBOW, the auctioneer, be and they hereby are jointly and severally enjoined and restrained from proceeding with the sale of the assets under the assignment proceeding for the benefit of creditors filed in the office of the Clerk of New York County on the 24th day of March, 1937, until further order of this Court.

ALFRED C. COXE
U. S. D. J.

Government's Exhibit 3.

UNITED STATES DISTRICT COURT, 2941

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

—of—

PAUL HYMOWITZ,

Alleged Bankrupt.

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN 2942
DISTRICT OF NEW YORK

The petition of NATHAN RIBACH and SAMUEL MANTIS, trading as RIBACH & MANTIS, a creditor herein, by JACOB P. SHULMAN, its attorney in fact, respectfully shows and alleges:

1. That on the 3rd day of April, 1937 an involuntary petition in bankruptcy was filed against the above named alleged bankrupt in this Court.

2. The alleged bankrupt formerly operated a retail army and navy goods store at 346 Bowery, in the Borough of 2943
Manhattan, City and State of New York.

3. That on the 24th day of March, 1937, the alleged bankrupt executed a general assignment for the benefit of creditors and notice of sale was sent out in the assignment proceeding that the assets would be sold at auction sale on April 5th, 1937 at 10:30 A. M.

4. After the filing of the assignment for the benefit of creditors a meeting of creditors was held at the Dry Goods & Furnishing Association at which time creditors expressed their dissatisfaction with the liquidation of the estate in

2944 the assignment proceeding and suggested that the assets of the alleged bankrupt be inspected for the purpose of determining the value based upon which the debtor or the alleged bankrupt was to offer a settlement. Subsequently thereto, the premises were opened for inspection and the assets were inspected by the various prospective buyers.

5. The attorney for the alleged bankrupt now refuses to make any offer of settlement and insists upon a liquidation of the assets in the assignment proceeding.

6. In view of the fact that the creditors are opposed to the liquidation of the estate in the assignment proceeding
2945 your petitioner desires to have the annexed order signed in order to stay the assignee from proceeding with sale under the assignment proceeding so that in the event that no settlement is made that an application for the appointment of a receiver in bankruptcy may be applied for and the assets sold under the supervision of this Court.

WHEREFORE, petitioner prays that the annexed order be signed for which no previous application has been made.

Dated, New York, April 3rd. 1937.

2946 RIBACH & MANTIS.
BY: JACOB P. SHULMAN (sgd)
Attorney in Fact.

Government's Exhibit 3.

State of New York, 2947
County of New York—ss.:

JACOB P. SHULMAN, being duly sworn, says:

That he is the attorney in fact of NATHAN RIBACH and SAMUEL MANTIS, trading as RIBACH & MANTIS, the petitioner herein. That he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

JACOB P. SHULMAN (sgd) 2948

Sworn to before me this
3rd day of April, 1937.

Sanford Jarett,
Notary Public, New York County
N. Y. Co. Clk. No. 26, Reg. No. 8J27
Cert. filed in Kings Co. Clk. No. 62
Term. exp. Mar. 30, 1938

2949

Government's Exhibit 3.

2950 UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

—of—

PAUL HYMOWITZ,

Alleged Bankrupt.

SIR:

2951 PLEASE TAKE NOTICE that, upon the annexed affidavit of ROBERT HOFFMAN, sworn to the 5th day of May, 1937, and upon a copy of the involuntary petition in bankruptcy, filed herein against the above named alleged bankrupt, and upon all the proceedings heretofore had herein, the undersigned will move this Court at a Motion Term thereof, to be held at the United States Court House, Foley Square, Borough of Manhattan, City and State of New York, on the 12th day of May, 1937, at 10:30 A. M. o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order dismissing the involuntary petition in bankruptcy filed herein against the alleged
2952 bankrupt, and for such other and different relief as to this Court may seem just and proper in the premises.

Dated: New York, May 6th, 1937.

Yours, etc.,

ROBERT HOFFMAN
Attorney for Alleged Bankrupt
Office & P. O. Address
1270 Broadway,
Borough of Manhattan,
City of New York

Government's Exhibit 3.

To: 2953

JACOB P. SHULMAN
Attorney for Petitioning Creditors
277 Broadway
New York City

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter 2954

—of—

PAUL HYMOWITZ,

Alleged Bankrupt.

State of New York,
County of New York—ss.:

ROBERT HOFFMAN, being duly sworn, deposes and says:

That he is the attorney for the alleged bankrupt herein. 2955

That an involuntary petition in bankruptcy was filed in the office of the Clerk of the United States District Court, Southern District of New York against the above named alleged bankrupt on April 3rd, 1937.

That annexed hereto is a copy of the said involuntary petition.

That the said petition does not state facts sufficient to warrant the granting of the relief prayed for therein.

That the said petition is dismissable on the ground that the allegations contained therein are insufficient in that there are no specific allegations of acts of bankruptcy and that

Government's Exhibit 3.

2956 the general allegations are insufficient to apprise the alleged bankrupt of the charge that he is called upon to meet and the said petition is therefor subject to challenge by demurrer or motion to dismiss.

That your deponent relies upon this conclusion upon the following cases:

In re Rosenblatt & Co., 193 Fed. 638
In Re Condon, 209 Fed. 890
In Re Fuller, 15 Fed. (2d), 294;

and Matter of Gaynor Homes Inc., 65 Fed. (2d) 378, de-
2957 cided by the Circuit Court of Appeals, Second Circuit, on May 1st, 1933, in which the Court said referring to the general allegations similar to the allegations contained in the involuntary petition in bankruptcy herein:

> "But, under repeated rulings of this Court allegations such as those set out above are insufficient to apprise the bankrupt of the charge he is called upon to meet; and the petition is therefore subject to challenge by demurrer or motion to dismiss."

Your deponent respectfully prays for an order dismissing the involuntary petition in bankruptcy filed herein.

2958 That no previous application for the relief herein sought has been made.

ROBERT HOFFMAN (sgd)

Sworn to before me this
5th day of May, 1937.

Meyer Parodnick
Notary Public
N. Y. Co. Clk. No. 498
Comm exp. 3/30/38

Government's Exhibit 3.

UNITED STATES DISTRICT COURT, 2959

SOUTHERN DISTRICT OF NEW YORK.

In Bankruptcy #67875.

In the Matter

—of—

PAUL HYMOWITZ,

Alleged Bankrupt.

1. Motion to dismiss involuntary petition in bankruptcy. 2960

2. Motion returnable May 12, 1937.

For the Motion
Robert Hoffman
Attorney for Alleged Bankrupt
Office & P. O. Address
1270 Broadway
New York City

In Opposition Thereto
Jacob P. Shulman 2961
Attorney for Petitioning Creditors
Office & P. O. Address
277 Broadway
New York City

Government's Exhibit 3.

2962 At a Stated Term of the United States District Court for the Southern District of New York, held at the United States Courthouse, Foley Square, Borough of Manhattan, City of New York, on the 14th day of May, 1937.

Present: HON. JOHN W. CLANCEY, *District Judge.*

67875

In the Matter

—of—

2963 PAUL HYMOWITZ,

Alleged Bankrupt.

An application having been made for the dismissal of the involuntary petition in bankruptcy heretofore filed herein against the above named alleged bankrupt on April 3rd, 1937,

NOW, upon reading and filing the notice of motion dated May 6th, 1937, the affidavit of Robert Hoffman, sworn to the 5th day of May, 1937 and upon the involuntary petition
2964 in bankruptcy heretofore filed herein and it appearing to the satisfaction of the Court that due notice was given to the attorney for the petitioning creditors herein and no one appearing in opposition to said motion, it is now on motion of ROBERT HOFFMAN, attorney for the alleged bankrupt,

ORDERED, that the involuntary petition to have PAUL HYMOWITZ adjudicated a bankrupt and the proceedings thereon be and the same are hereby dismissed.

John W. Clancy
U. S. D. J.

Government's Exhibit 4.

STIPULATION. 2965

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

—v—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

2966

IT IS HEREBY STIPULATED, AGREED and ADMITTED by and between the defendants in the above entitled action and the United States Attorney for the Southern District of New York that the signature of Jacob P. Shulman appearing in the petition in bankruptcy in the matter of Paul Hymowitz, a photostatic copy of which is attached hereto, is the signature of the defendant Jacob P. Schulman.

Dated: New York, N. Y., June 5, 1940.

Harold H. Corbin
Attorney for Defendants 2967
Martin M. Goldman and Theodore Goldman.

Phillips Mahoney & Fielding
Attorney for Defendant
Jacob P. Schulman.

George J. Mintzer
Attorney for Defendant
Samuel Irving Kandell.

.....
United States Attorney.

Government's Exhibit 4.

2968

STIPULATION.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

—v—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

2969

IT IS HEREBY STIPULATED, AGREED AND ADMITTED by and between the defendants in the above entitled action and the United States Attorney for the Southern District of New York that the signature appearing on the letter dated May 19, 1937 from Goldman, Malter & Goldman to Robert Hoffman, of which a photostatic copy is attached hereto, is the signature of the defendant Theodore Goldman.

Dated: New York, N. Y., June 5, 1940.

2970

Harold H. Corbin
Attorney for Defendants
Martin M. Goldman and Theodore Goldman.

Phillips Mahoney & Fielding
Attorney for Defendant
Jacob P. Schulman.

George J. Mintzer
Attorney for Defendant
Samuel Irving Kandell.

.....
United States Attorney.

Government's Exhibit 4.

STIPULATION

2971

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

—v—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

2972

IT IS HEREBY STIPULATED, AGREED and ADMITTED by and between the defendants in the above entitled action and the United States Attorney for the Southern District of New York that the signature appearing on the letter dated May 4, 1937 from Goldman, Malter & Goldman to Robert Hoffman, of which a photostatic copy is attached hereto, is the signature of the defendant Theodore Goldman.

Dated: New York, N. Y., June 5, 1940.

Harold H. Corbin
Attorney for Defendants 2973
Martin M. Goldman and Theodore Goldman.

Phillips Mahoney & Fielding
Attorney for Defendant,
Jacob P. Schulman.

George J. Mintzer
Attorney for Defendant
Samuel Irving Kandell.

.....
United States Attorney.

Government's Exhibit 4.

2974

STIPULATION.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

—v—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

2975

IT IS HEREBY STIPULATED, AGREED and ADMITTED by and between the defendants in the above entitled action and the United States Attorney for the Southern District of New York that the signature appearing on the letter dated May 7, 1937 from Goldman, Malter & Goldman to Robert Hoffman, of which a photostatic copy is attached hereto, is the signature of the defendant Theodore Goldman.

Dated: New York, N. Y., June 5, 1940.

2976

Harold H. Corbin
Attorney for Defendants
Martin M. Goldman and Theodore Goldman.

Phillips Mahoney & Fielding
Attorney for Defendant
Jacob P. Schulman.

George J. Mintzer
Attorney for Defendant
Samuel Irving Kandell.

.....
United States Attorney.

Government's Exhibit 5.

2977

Please take notice, that a meeting of the creditors of Paul Hymowitz of 346 Bowery, Manhattan, New York City will take place on Thursday, March 25, 1937, at 4 PM, sharp at the offices of Dry Goods & Furnishings Association, Inc., at 175 5th Avenue, Manhattan, New York City, Room 1715.

Yours, etc.,

ROBERT HOFFMAN,
Attorney for Assignee;
1270 Broadway, New York. 2978

2979

Government's Exhibit 5a.

2980

LAW OFFICES OF
ROBERT HOFFMAN
1270 Broadway
New York City

March 24, 1937

Gentlemen: re: Paul Hymowitz, 346 Bowery, N. Y. C.

I desire to advise you that on the 22nd day of March, 1937, Paul Hymowitz made a general assignment for the benefit of his creditors to Samuel S. Kolman, of 1270 Broadway, Manhattan, New York City.

2981 I desire to inform you of the reasons for the necessity of the making of this assignment.

Briefly, Paul Hymowitz, on or about the 18th day of March, 1937, in the Court of Special Sessions in the City of New York, was sentenced to serve an indeterminate term and is now confined to the penitentiary at Riker's Island. Although neither Mr. Kolman nor myself represented Paul Hymowitz in this criminal action, I have been informed that the charges which were made against him, and upon which he was convicted, were groundless, and that efforts are being made in his behalf to see that justice is done.

Nevertheless, a situation developed which required immediate action. As most all creditors know, the business which was conducted by Paul Hymowitz at 346 Bowery, Manhattan, New York City, was in existence for the past twenty years or more. Paul Hymowitz succeeded to the business after the death of his father, which occurred about five or six years ago.

2982

The widowed mother of Paul Hymowitz made a futile atempt to conduct the business after her son Paul was convicted. Being in poor health and worn by worries over her son's difficulties, and further by reason of poor business conditions due to unseasonable weather, there was no hope of continuing this business without detrimental consequences to creditors.

Government's Exhibit 5a.

It is the wish of Paul Hymowitz that his business be 2983
liquidated so that the creditors shall receive the greatest possible benefit and has entrusted Mr. Kolman with carrying out his wishes.

Accordingly, a conference was had with Mr. Hymowitz at Riker's Island on the night of March 22nd, 1937, at which time additional information was secured as to the condition of the business, etc. Thereafter, an appraisal was had and it is estimated that the cost value of the merchandise and stock in the store is of the approximate value of about Twenty-two hundred to Twenty-five hundred dollars. There is also on hand Emergency Relief Bureau vouchers of the value of approximately Two Hundred and fifty dollars, 2984
which, when presented to the City, will realize that sum to the Estate. We are informed that the City is also indebted to Paul Hymowitz in the further sum of approximately Two hundred dollars in connection with other relief vouchers. Of course, there are fixtures which may or may not have any value. Accordingly, then, the assets would appear to be about Twenty-seven hundred to Three thousand dollars. The liabilities, as we are informed by Mr. Hymowitz, approximate about Twenty-five hundred dollars.

It is our purpose to see that a thorough and proper administration is had and that creditors shall realize as close 2985
to one hundred per cent of their claims as possible.

Keeping in mind the above facts as set forth and the conditions under which the assignment was made, we ask for your cooperation towards a speedy and thorough administration of this estate.

We shall be pleased to have you make any inquiry which you may desire for any other and further information.

Very truly yours,

Robert Hoffman

rh/ad

Government's Exhibit 5c.

2986.

Supreme Court, New York County.

In the matter of the general assignment for the benefit of creditors of Paul Hymowitz to Samuel S. Kolman, Assignee.

Please take notice, that the undersigned will sell at public auction, by Gabriel Wishbow, auctioneer, on the 5th day of April, 1937, at 10:30 AM at No. 346 Bowery, in the Borough of Manhattan, City of New York, assets of the above named assignor, consisting of army and navy goods, fixtures, etc.

2987

Samuel S. Kolman, Assignee

Robert Hoffman
Attorney for Assignee
1270 Broadway
New York City

2988

Government's Exhibit 6.

SUPREME COURT, 2989

NEW YORK COUNTY.

In the Matter of the General Assignment for the benefit of the creditors of

PAUL HYMOWITZ,

Assignor,

—to—

SAMUEL S. KOLMAN,

Assignee. 2990

TO THE CLERK OF THE SUPREME COURT, SPECIAL TERM, PART II:

SIR:

I, SAMUEL S. KOLMAN, as assignee of PAUL HYMOWITZ, under an assignment made the 24th day of March, 1937, and filed in the office of the Clerk of the County of New York on the 24th day of March, 1937, do hereby retain GOLDMAN, MALTER & GOLDMAN and ROBERT HOFFMAN, as my attorneys in these proceedings. 2991

Dated: New York, March 25th, 1937.

.....

Assignee.

State of New York,
County of New York—ss.:

On this 25th day of March, 1937, before me personally came SAMUEL S. KOLMAN, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Government's Exhibit 7.

2992

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

In the Matter of the General Assignment for the Benefit of Creditors of

PAUL HYMOWITZ,

Assignor,

2993

—to—

SAMUEL S. KOLMAN,

Assignee.

The undersigned, assignor, hereby consents to the designation of SAMUEL I. KANDELL as co-assignee in the above entitled proceeding.

Dated, New York, March , 1937.

2994

.....

ASSIGNOR.

.....

ASSIGNOR.

Government's Exhibit 8.

2995

KNOW ALL MEN BY THESE PRESENTS, That I, PAUL HYMOWITZ, formerly of No. 105 West 168th Street, in the Borough of Bronx, City and State of New York, and having a place of business at No. 346 Bowery, in the Borough of Manhattan, County of New York and City and State of New York, party of the first part, for and in consideration of the sum of Twelve hundred and no/100 ($1200.00) Dollars in lawful money of the United States and other valuable consideration to me in hand paid at or before the ensealing and delivery of these presents by L. Wein, of 430 Grand St. Manhattan N. Y. City, party of the second part, the receipt whereof is hereby acknowledged, 2996
have bargained and sold and by these presents do grant and convey unto the said party of the second part, his executors, administrators, successors and assigns, all my right, title and interest in and to the fixtures, stock and merchandise consisting of army and navy men's general merchandise as now contained in store premises at 346 Bowery, Manhattan, New York City.

To have and to hold the same unto the said party of the second part, his executors, administrators, successors and assigns forever.

And I do, for myself, my heirs, executors and administrators, covenant and agree to and with the said party of 2997
the second part, to warrant and defend the sale of the said stock and merchandise, as aforesaid, hereby sold unto the said party of the second part, his executors, administrators, successors and assigns, against any and every person and persons whomsoever.

The foregoing is subject to a conditional sales agreement or chattel mortgage now a lien on the cash register which is part of the assets hereby sold.

Government's Exhibit 8.

2998 IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of April, 1937.

WITNESS:

Paul Hymowitz (L.S.)
Paul Hymowitz

State of New York,
County of New York—ss.:

2999 On this 20th day of April, 1937, before me personally came PAUL HYMOWITZ, to me known to be the individual described in, and who executed the foregoing instrument and he acknowledged that he executed the same.

Charles C. Groppe
Notary Public
Comm. of Deeds N. Y. City
N. Y. Co. Clks #226
Comm. Expires 11/24/38

3000

Government's Exhibit 9.

3001

State of New York,
City of New York,
County of New York—ss.:

PAUL HYMOWITZ, formerly of No. 105 West 168th Street, in the Borough of Bronx, City and State of New York, and having a place of business at No. 346 Bowery, in the Borough of Manhattan, City and State of New York, County of New York, do hereby state that the Schedule hereto annexed sets forth all the creditors of the business which I conducted at 346 Bowery, Borough of Manhattan, City, County and State of New York.

3002

Paul Hymowitz (L.S.)
Paul Hymowitz

State of New York,
City of New York,
County of New York—ss.:

On this 20th day of April, 1937, before me personally came PAUL HYMOWITZ, to me known to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same.

3003

Charles C. Groppe
Notary Public
Comm. of Deeds, N. Y. City
N. Y. Co. Clks #226
Comm. Expires 11/24/38

Government's Exhibit 9.

3004 LIST OF CREDITORS

	Approximate Amount
Wolf Appleton, 566 Broadway, N. Y.	$ 84.64
Bort Shirt Co., 442 Broadway, N. Y.	56.27
Brooklyn Overall Co., 276-86 Dumont Av. Brooklyn, N. Y.	73.51
Butler Bros., 860 Broadway, N. Y.	403.83
Endicott Johnson Corporation, 155 West Broadway, N. Y.	236.38
Forman Wholesale Corp., 14 Orchard Street, N. Y.	80.83
3005 Consolidated Edison Co. of N. Y. Inc., 4 Irving Place, N. Y.	21.05
N. Y. Telephone Co., 140 West Street, N. Y.	27.03
Mayer & Wertheim, 41 E. 42nd Street, N. Y.	44.43
A. Kaplan, 268 Stockton St., Bklyn., N. Y.	14.85
A. Kreiselman & Sons, 36 Orchard St., N. Y.	158.50
Harry Levy, 122 West Broadway, N. Y.	211.57
National Cash Register, Dayton, Ohio Bal.	60.00
A. Rosen, 38 Great Jones St., N. Y.	9.00
Schwartz & Zuckerman, 15 Orchard St., N. Y.	85.88
Samuel Siff, 510 Broadway, N. Y.	102.86
3006 J. Turetsky, Inc., 47 Canal St., N. Y.	44.50
Trenton Shirt Manufacturing Co., 614-16 Warren St. Trenton, N. J.	179.30
The Union Pants & Overall Mfg. Co., Bordentown, N. J.	29.50
M. Shafiff, 103 Norfolk St., N. Y.	10.50
Riback & Mantis, 17 Orchard St., N. Y.	117.76
Helen R. Hobbie, c/o Burke & Burke, 72 Wall Street, N. Y.	150.00
H. Rabinowitz, c/o Synagogue, 65 E. 3 St. N. Y. (Res.) 99 E. 4 St., N. Y.	112.50
Max Horowitz, 34 Bond Street, N. Y.	10.00

Government's Exhibit 9.

	Approximate Amount	3007
Roth & Co., 56 Orchard Street, N. Y.	49.00	
H. D. Lee Mercantile Co., Trenton, N. J.	33.15	
H. Shapiro, 331 Snediker Ave., Brooklyn, N. Y.	3.75	
Lewis A. Rosen, 261 Broadway, N. Y.		
National City Bank, Bowery Branch, Bowery & Bond, N. Y.	205.00	
City Sales Tax, 50 Lafayette Street, N. Y.		
The U. S. Window Cleaning Co., 53 East 4th Street, N. Y.	5.00	

3008

Paul Hymowitz
Paul Hymowitz

3009

Government's Exhibit 10.

3010 Received from Robert Hoffman, Esq. of 1270 Broadway, New York, bill of sale signed by Paul Hymowitz covering merchandise and fixtures at 346 Bowery, New York, together with affidavit of the creditors, both instruments being signed and acknowledged on April 20th, 1937.

I am to transfer the said instruments to the purchaser of said property upon the dismissal of the pending bankruptcy proceedings and the assignment for the benefit of creditors heretofore made by said Hymowitz to one Samuel Kolman and said proceeds are to be paid to creditors on the basis of 40% of their respective claims, which shall be in
3011 full settlement and release of said claims. The fund is also to be used for the payment of administration fees and expenses, including the fees of Robert Hoffman, Esq., incurred in the matter.

Dated, New York, April 26th, 1937.

Jacob P. Shulman

as attorney for Paul Hymowitz in the foregoing proposed bulk sale and settlement, I hereby authorize the said Jacob P. Shulman to make distribution of the funds men-
3012 tioned in the foregoing instrument on the terms herein set forth.

4/26/37.

Robert Hoffman.

Government's Exhibit 11.

3013

April 26th, 1937.

Jacob P. Shulman, Esq.
277 Broadway,
New York City.

Dear Sir:

It is further understood that in connection with the proposed bulk sale and settlement with creditors that I will obtain and immediately transfer to Jacob P. Shulman, attorneys for creditors, the present outstanding claims or vouchers against the City of New York in favor of said Paul Hymowitz for the purpose of and to be included in the 3014
said plan of settlement as outlined in a certain letter dated April 26th, 1937 signed by Jacob P. Shulman.

Said Jacob P. Shulman agrees that the proceeds if and when received from the City of New York in connection with the foregoing, shall be used for the purpose as mentioned in said letter dated April 26th, 1937.

4/26/37.

Robert Hoffman

O. K. R. H. 4/26/37 3015

Government's Exhibit 12.

3016

GOLDMAN, MALTER & GOLDMAN
Attorneys at Law
302 Broadway
New York

Martin M. Goldman
Harry Malter
Theodore Goldman

Telepone
BArclay 7-7897

May 4th, 1937.

Robert Hoffman, Esq.,
1270 Broadway,
3017 New York City.

Re: Paul Hymowitz

Dear Sir:

In accordance with your letter addressed to us dated April 26th, 1937 and in accordance with our telephone conversation today, we are enclosing herewith a retainer to be signed by Samuel S. Kolman, assignee and also a notice of appearance for you to sign together with an affidavit for you to sign in connection with the motion to dismiss the involuntary petition in bankruptcy.

3018 Please be good enough to have these papers signed and returned to us at once.

Very truly yous,

GOLDMAN, MALTER & GOLDMAN
BY: Theo Goldman

TG:PM

Government's Exhibit 13.

3019

GOLDMAN, MALTER & GOLDMAN
Attorneys at Law
302 Broadway
New York

Martin M. Goldman
Harry Malter
Theodore Goldman

Telepone
BArclay 7-7897

May 7th, 1937.

Robert Hoffman, Esq.
1270 Broadway
New York City

3020

RE: PAUL HYMOWITZ

Dear Sir:

Enclosed herewith is copy of notice of motion to dismiss the petition returnable on May 12th, 1937 at 10:30 A. M.

We have already served Mr. Shulman with a copy of the notice of motion and are arranging to file a note of issue and place the matter on the motion calendar.

We will appear in Court for you on the return day of the motion and enter the necessary order upon the granting of the motion.

3021

Very truly yous,

GOLDMAN, MALTER & GOLDMAN
BY Theo Goldman

TG:EC
ENC.

Government's Exhibit 14.

3022

GOLDMAN, MALTER & GOLDMAN
Attorneys at Law
302 Broadway
New York

Martin M. Goldman
Harry Malter
Theodore Goldman

Telepone
BArclay 7-7897

May 19th, 1937.

Robert Hoffman, Esq.
1270 Broadway
3023 New York City

RE: PAUL HYMOWITZ

Dear Sir:

We are enclosing herewith copy of an order signed by Hon. John W. Clancy, District Judge on May 14th., 1937, dismissing the involuntary petition in bankruptcy heretofore filed against Paul Hymowitz.

We are also enclosing herewith bill of sale of Paul Hymowitz to A. Rothlein; letter addressed to Goldman, Malter & Goldman, in connection with the distribution of the monies received from the sale of the assets and from
3024 the City of New York, and an assignment by Paul Hymowitz to Goldman, Malter & Goldman of all monies due from the City of New York, all of which are to be executed by Paul Hymowitz.

Please be good enough to return these executed instruments as soon as they have been executed by Mr. Hymowitz.

Very truly yous,

GOLDMAN, MALTER & GOLDMAN
BY Theo Goldman

TG:E
ENC.

Government's Exhibit 14a.

May 19th, 1937.

Goldman, Malter & Goldman, Esqs. 3025
302 Broadway
New York City

RE: PAUL HYMOWITZ, 346 BOWERY, NEW YORK CITY

Gentlemen:

In connection with the sale of my business at 346 Bowery, New York City to A. Rothlein for the sum of $1500.00, I hereby turn over to you a bill of sale executed by me to A. Rothlein in connection therewith, and authorize you to obtain from A. Rothlein the sum of $1500.00 upon the delivery of the bill of sale, which bill of sale is not 3026
to be delivered and sale consummated until the dismissal of the general assignment for the benefit of creditors heretofore executed by me to Samuel S. Kolman, which sum of $1500.00 you are authorized to deposit in your account and use the said money for the following purposes:

1. To pay to all of my creditors set forth in the sworn list of creditors, dated April 20th, 1937, 40% of their claims, except the claim due to the City Sales Tax Bureau for retail sales tax, which is to be paid in full.

2. To pay all administration expenses, legal fees and disbursements in connection with the bankruptcy proceeding and the assignment for the benefit of creditors. 3027

It is understood that this sum of $1500.00, together with the monies due to me from the City of New York, is to be used for the above mentioned purposes and that no portion of this money will be claimed by me.

This letter will serve as authority to Samuel S. Kolman to turn over to you any monies in his possession as assignee to be used for the purposes hereinabove mentioned.

Very truly yours,

PAUL HYMOWITZ*

*Name Paul Hymowitz only typewritten in original exhibit.

Government's Exhibit 14b.

3028 State and County of New York—ss.:

On this day of May, 1937, before me personally appeared PAUL HYMOWITZ, to me known and known to me to be the individual described in and who executed the foregoing letter, and he duly acknowledged to me that he executed the same.

.....

Notary Public

Government's Exhibit 14b.

3029 KNOW ALL MEN BY THESE PRESENTS, THAT I, PAUL HYMOWITZ party of the first part, for and in consideration of the sum of ($1500.00) Fifteen Hundred and 00/100 Dollars, lawful money of the United States to me in hand paid, at or before the ensealing and delivery of these presents, by A. ROTHLEIN, party of the second part, the receipt of which is hereby acknowledged, has bargained and sold, and by these presents does grant and convey unto the said party of the second part, his executors, administrators, successors and assigns all of the merchandise consisting of army and navy goods, etc., now contained in store at 346 Bowery, New York City, together
3030 with any demands, claims, suits and any and all other assets of every kind and nature, subject to any and all liens in or against the same.

TO HAVE AND TO HOLD the same unto the said party of the second part his executors, administrators, successors and assigns forever. And I, do for my heirs, executors and administrators, covenant and agree to and with the said party of the second part, to warrant and defend the sale of the said assets hereby sold unto the said party of the second part, his executors, administrators, successors and assigns, against all and every person and persons whomsoever.

Government's Exhibit 14b.

IN WITNESS WHEREOF, I have hereunto set my hand 3031
and seal this day of May, one thousand nine hundred and thirty-seven.

Signed, sealed and delivered
in the presence of

.....(L. S.)

.....(L. S.)

State of New York,
City of New York, 3032
County of New York—ss.:

PAUL HYMOWITZ being duly sworn, deposes and says that he resides at
in the Borough of , in the City of

That he is the same person who executed the within bill of sale.

That he is the sole and absolute owner of the property described in said bill of sale, and has full right to sell and transfer the same.

That the said property, and each and every part thereof, is free and clear of any liens, mortgages, debts or other 3033
incumbrances of whatsoever kind or nature, except as aforestated.

That he is not indebted to anyone and has no creditors except as set forth on the sworn list of creditors dated April 29th, 1937.

That there are no judgments existing against him, in any Court, nor are there any replevins, attachments or executions issued against him now in force; nor has any petition in bankruptcy been filed by or against him, except that an involuntary petition in bankruptcy was filed which was dismissed by the Court on May 14th, 1937.

Government's Exhibit 14b.

3034 That this affidavit is made for the purpose and with the intent of inducing A. ROTHLEIN to purchase the property described in said bill of sale, knowing that he will rely thereon and pay a good and valuable consideration therefor.

Sworn to before me
day of May 1937

..... (L. S.)

..... (L. S.)

3035 .....
Notary Public

State of New York,
County of New York,
City of New York—ss.:

On the day of May in the year one thousand nine hundred and thirty-seven before me personally came and appeared PAUL HYMOWITZ to me known, and known to me to be the person described in and who executed the within bill of sale, and he acknowledged to me that he executed the same.

3036

.....
Notary Public

Government's Exhibit 14c.

KNOW ALL MEN BY THESE PRESENTS, that the 3037
undersigned, PAUL HYMOWITZ, formerly in business at 346 Bowery, New York City, for and in consideration of the sum of One ($1.00) Dollar and other valuable considerations to it in hand paid by GOLDMAN, MALTER & GOLDMAN, attorneys, at 302 Broadway, in the Borough of Manhattan, City of New York, the receipt whereof is hereby acknowledged, hereafter referred to as the assignee, does hereby transfer, assign and set over unto the assignee, all sums which are due and hereafter become due from the City of New York or the State of New York or any other governmental department or agency in connection with Emergency Relief Bureau vouchers, issued by the 3038
City of New York, and or the Emergency Relief Bureau, which vouchers were heretofore turned over to PAUL HYMOWITZ.

In the event this assignment shall not be authorized under the laws of the State or municipality or under the rules or regulations of any governmental body, having jurisdiction in the premises, then, and in that event, this instrument shall be construed as though it were only an assignment of the monies receivable by PAUL HYMOWITZ from the Emergency Relief Bureau.

The undersigned, PAUL HYMOWITZ, agrees to hold in trust for the benefit of the assignee, and to immediately 3039
pay over to the assignee, upon the receipt thereof by PAUL HYMOWITZ, any and all sums so received by PAUL HYMOWITZ on account of any such Emergency Relief Bureau vouchers.

The undersigned, PAUL HYMOWITZ, further agrees to execute such papers and documents as may be necessary or requisite to enable the obtaining of such monies from the Emergency Relief Bureau.

In Witness Whereof, the undersigned has executed this assignment the day of May, 1937.

.....

Government's Exhibit 15.

3040 State of New York,
County of New York—ss.:

On the day of May, 1937, before me personally appeared PAUL HYMOWITZ, to me known and known to me to be the individual described in and who executed the foregoing assignment, and he duly acknowledged to me that he executed the same.

.....
Notary Public

3041 **Government's Exhibit 15.**

STIPULATION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

—v—

3042 MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

IT IS HEREBY STIPULATED, AGREED and ADMITTED by and between the defendants in the above entitled action and the United States Attorney for the Southern District of New York that on or about May 13, 1937 the defendant Samuel Irving Kandell caused to be mailed within the Southern District of New York a letter to all the creditors of Paul Hymowitz including the Endicott-Johnson Corporation, enclosing therein a notice and

Government's Exhibit 15.

a form of consent to a settlement, of which the photostatic 3043
copies attached hereto are true and correct copies, and

FURTHER, that the copies attached hereto may be used in the trial of this action with the same force and effect as the originals.

Dated: New York, N. Y., June 5, 1940.

Harold H. Corbin
Attorney for Defendants
Martin M. Goldman and Theodore Goldman.

Phillips Mahoney & Fielding
Attorney for defendant 3044
Jacob P. Schulman

George J. Mintzer
Attorney for Defendant
Samuel Irving Kandell.

John T. Cahill
United States Attorney.

Letterhead of
THE DRY GOODS and FURNISHINGS ASSOCIATION, Inc.
175 Fifth Avenue New York City 3045
ALgonquin 4-6865

(Stamped on Face of Letter)
RECEIVED May 15 1937

May 13, 1937.

To the creditors of PAUL HYMOWITZ.
346 Bowery,
New York City.

Gentlemen:

Since the general assignment for the benefit of creditors, and the involuntary petition in bankruptcy was filed,

Government's Exhibit 15.

3046 numerous conferences were held with the attorney for the debtor, as a result of which, arrangements were made whereby the petition in bankruptcy would be dismissed and the assignment for the benefit of creditors vacated and a settlement of 40% in cash paid to the creditors through the sale of the debtor's assets.

We are enclosing herewith a form of consent to the dismissal of the assignment proceeding which you will please be good enough to sign at the places indicated and have same sworn to before a Notary Public and returned to us, together with an itemized statement of your account
3047 for verification.

It is necessary that this form be signed and acknowledged before a Notary Public and if your concern is a corporation then the corporation seal should be placed thereon. The first acknowledgment is for a corporation and the second acknowledgment for an individual or partnership.

We are also enclosing herewith a bulk sale notice for the purpose of consummating a sale of the assets, the monies from which will be used for the 40% cash settlement.

Please return these papers AT ONCE and oblige.

3048 Very truly yours,

THE DRY GOODS & FURNISHINGS ASSOCIATION INC.

Government's Exhibit 15.

May 13, 1937. 3049

Re: PAUL HYMOWITZ, 346 BOWERY, NEW YORK CITY, NEW YORK.

Gentlemen:

Please take notice that the undersigned will purchase from PAUL HYMOWITZ, all of the merchandise consisting of army and navy goods, fixtures, etc., now contained in store at 346 Bowery, New York City, New York, together with any demand, claims, suits and any and all other assets of every kind and nature, subject to any and all liens in or against the same, for the sum of $1500.00 in cash to be 3050
paid at the time of closing.

The closing of the said sale will take place at the office of Goldman, Malter & Goldman, attorneys, 302 Broadway, New York City, New York, on Monday, May 24, 1937, at 9 A. M.

Very truly yours,

A. Rothlein, purchaser.

3051

Government's Exhibit 15.

3052 SUPREME COURT,

NEW YORK COUNTY.

In the Matter of the General Assignment for the Benefit of Creditors of

PAUL HYMOWITZ,

Assignor,

—to—

SAMUEL S. KOLMAN,

3053 Assignee.

The undersigned, a creditor herein, does hereby consent to the entry of an order, vacating and dismissing the general assignment for the benefit of creditors, heretofore executed by PAUL HYMOWITZ, and all proceedings taken thereon, and further providing for the discharge of the assignee and the cancellation of his bond.

NAME OF CREDITOR	ADDRESS	AMOUNT
.....	.....	.....

3054 BY .....

Government's Exhibit 15.

State of
County of —ss.: 3055

On this..... day of....., 1937, before me personally came....., to me known, who being by me duly sworn, did depose and say that he resides in..... that he is the.....; of....., the corporation described in and which executed the above instrument, that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order. 3056

.....
Notary Public

State of
County of —ss.:

On this..... day of....., 1937, before me personally came....., to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged 3057
to me that he executed the same.

.....
Notary Public

Government's Exhibits 16 and 17 for Identification.

3058 Affidavits (omitted by consent).

Government's Exhibits 18, 18a, 19, 19a, 20, 20a, 21 and 21a.

Bodinger's Notes and Transcripts of Bodinger (omitted pursuant to stipulation).

Government's Exhibit 22 for Identification.

New York, New York
November 29, 1939

3059

STATEMENT OF LOUIS ABRAMSON

I, LOUIS ABRAMSON, hereby make the following voluntary statement to Special Agents L. L. JUSKOW and S. S. RUBENSTEIN of the Federal Bureau of Investigation. I make this statement voluntarily upon my own free will and there have been no threats or promises made to me.

I reside at 2272 82nd Street, Brooklyn, New York, and conduct an auctioneering business at 430 Grand Street, New York City. Sometime in the spring of 1937 I believe I was called on the telephone by either MARTIN GOLDMAN, JACOB SHULMAN, PHILIP COHEN, or SAMUEL
3060 KANDELL, who asked me for an offer on the merchandise of the Army and Navy Store at 346 Bowery, New York City. I do not remember which of these men called. I gave them a figure, the amount of which I do not remember, as my offer. I do not recall which of these men I gave the offer to. My offer was never accepted and I never heard from them since.

I may have made a later offer, but I cannot state definitely whether I did or not. It is possible that I may have given one of the above mentioned parties my offer at the store at 346 Bowery, while I was looking over the stock, but I am not sure of this.

Government's Exhibit 22 for Identification.

There has been exhibited to me by Special Agent RUBENSTEIN and Special Agent JUSKOW a photostatic copy of a typewritten bill of sale, executed by PAUL HYMOWITZ on April 20, 1937, which bill of sale indicates that the stock of this store was sold to L. WEIN, 430 Grand Street, Manhattan, New York City, for the sum of $1200. 3061

The name of L. WEIN and address was written in this typewritten bill of sale in ink. L. WEINE, which is the correct spelling, is my brother-in-law and at times I use his name for business reasons in making offers. In this particular case, however, there may have been something said at the time the offer was made by me which caused me to mention the name of L. WEINE to either GOLDMAN, SHULMAN, COHEN, KANDELL, or perhaps another party in the store at the time. 3062

I have never seen this bill of sale before today. Whoever used the name of "L. WEIN" did so without my authority, as neither I nor L. WEINE had anything to do with the actual purchase of this stock, and therefore this bill of sale is not correct, so far as I am concerned or L. WEINE. I do not know who prepared this bill of sale. I gave no one the authority to prepare it and I know nothing about it whatsoever.

3063

I have read the foregoing statement consisting of two pages and the facts stated therein are true and correct to the best of my knowledge and belief.

Louis Abramson

WITNESS:
Leonard L. Juskow

Sidney S. Rubenstein
Special Agents
Federal Bureau of Investigation
607 U. S. Court House, Foley Square
New York, New York

Government's Exhibit 23 for Identification.

3064 Order to Show Cause (omitted pursuant to stipulation).

Government's Exhibit 24 for Identification.

Page 80 of Grand Jury Minutes (omitted pursuant to stipulation).

Government's Exhibit 25 for Identification.

Entire Transcript of Testimony of Theodore Goldman before Grand Jury (omitted pursuant to stipulation).

3065 **Government's Exhibit 26 for Identification.**

3 Newspaper Notices (omitted pursuant to stipulation).

Defendants' Exhibit A for Identification.

State of New York,
County of New York—ss.:

SAM RICH, being duly sworn deposes and says, that he knew Paul Hymowitz prior to February 1937, that in February 1937 his sister was married to Paul Hymowitz. Late in March 1937 Paul Hymowitz was committed to 3066 Rikers Island and a few days subsequent to his admittance Mrs. Paul Hymowitz called her brother, Sam Rich, and asked him for advice regarding carrying on of the business conducted by Paul Hymowitz at 346 Bowery, New York City, New York. Mr. Rich told her he would come over to the store, look over the stock as to its value and then determine what to do. A day or two later, that is in March 1937, Sam Rich, his brother Charles Rich, Mrs. Paul Hymowitz, Mrs. Hymowitz the mother of Paul Hymowitz, and a brother of Paul Hymowitz, met at the store at about noon. A detailed and itemized inventory was taken and the prices

were secured from the bills. Sam Rich wrote down the 3067
items and prices and later extended and totaled them and he now says that the grand total was about $1800.00 at cost. They worked on the inventory until about 7 P. M., and about that time the brother of Mr. Hymowitz, who had left some time earlier, returned with the attorney Robert Hoffman who questioned Mr. Sam Rich as to the value of the stock and what he would pay for it. Mr. Sam Rich gave the original hand written inventory to Mr. Hoffman and showed him the total was about $1800.00 at cost and he further told him he would pay between $1100.00 and $1200.00 for the stock and fixtures because that is all it was worth. 3068
He Told Mr. Hoffman that a good part of the stock was winter stock and was worth considerably less at that time of the year and then again some of the stock was shop worn. Mr. Hoffman was then given the keys to the store and when they all departed he also took with him the Inventory and said he would advise Mr. Sam Rich of his decision as to what he was going to do with the matter. He never communicated with Mr. Sam Rich and the other members of Mr. Rich's family.

I, Sam Rich, have had more than 20 years of experience in the men's furnishings field and am fully aware of the values of such merchandise. I have also bought and sold 3069
hundreds of such stocks of merchandise in bulk and otherwise. I reside at 2460 Davidson Ave., Bronx, N. Y.

Sam Rich

Sworn to before me this
1st day of July, 1940.

Philip R. Cohen
PHILIP R. COHEN, NOTARY PUBLIC
Queens County Clerk's No. 385
New York County Clerk's No. 516
Kings County Clerk's No. 174
Commission Expires March 30, 1943

Defendants' Exhibit B.

3070 **FINAL ACCOUNTING ASSIGNMENT PROCEEDINGS**

INCOME.

Amount received from auctioneer	$1,219.35	
Relief tickets	200.00	
Sundry items	7.32	
		$1,426.67

PREFERRED CREDITORS.

Sales tax—New York City	$ 308.46	
3071 Business tax—New York City	15.31	
Rent (Assignee in possession)	450.00	473.77
		$ 952.90

ADMINISTRATION EXPENSES.

Assignee's expenses	$ 104.44	
Assignee's expenses (prospective)	2.00	106.44
		$ 846.46

TO FEES.

3072

Assignee's commissions	$ 88.19
Attorney for Assignee—Robert Hoffman	300.00
	$ 388.19

TO CREDITORS.

Total amount due	2,729.73	
Total amount received	17%	458.27
		$ 846.46

Defendants' Exhibit C.

3073

Telephone CAnal 6-3781

ABR. STRINGER & JACK MICHAELS
Auctioneers and Appraisers
57 Walker Street
New York

May 28, 1940

In April 1937, I was called up by Jacob P. Shulman to appraise and bid on an army and navy stock on the Bowery. With Phil Stringer, I went to that store, examined 3074
the stock and fixtures and told Mr. Shulman that we would pay $1000—top, for that stock. Mr. Shulman tried to have us give a higher offer but we told him that it was not worth more than $1000—and that we could not go higher.

Jack Michaels

3075

Defendants' Exhibit D.

3076

SUPREME COURT.

NEW YORK COUNTY.

In the Matter of the General Assignment for the Benefit of Creditors of

PAUL HYMOWITZ,

Assignor,

—to—

SAMUEL S. KOLMAN,

3077

Assignee.

The undersigned, a creditor herein, does hereby consent to the entry of an order, vacating and dismissing the general assignment for the benefit of creditors, heretofore executed by PAUL HYMOWITZ, and all proceedings taken thereon, and further providing for the discharge of the assignee and the cancellation of his bond.

NAME OF CREDITOR	ADDRESS	AMOUNT
3078 Riback & Mantis	17 Orchard St.	$117.76

BY Samuel Mantis .....

Defendants' Exhibit D.

State of
County of —ss.: 3079

On this....day of....., 1937, before me personally came .....6, to me known, who being by me duly sworn, did depose and say that he resides in.....; that he is the.....of ....., the corporation described in and which executed the above instrument, that he knows the seal of said corporation; that the seal affixed said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order. 3080

.....
Notary Public

State of
County of —ss.:

On this....day of....., 1937, before me personally came....., to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same. 3081

.....
Notary Public

Defendants' Exhibit E.

3082 April 1st, 1937.

Mr. Harry Levy
122 West Broadway
New York City

RE: PAUL HYMOWITZ

Dear Sir:

Enclosed herewith is a proof of claim which you will please be good enough to sign and return to us.

Very truly yours,

GOLDMAN, MALTER & GOLDMAN
BY

3083 TG:EC
ENC.

April 1st, 1937.

Robert Hoffman, Esq.
1270 Broadway
New York City

RE: PAUL HYMOWITZ

Dear Sir:

Please be good enough to mark your records that we
3084 represent Harry Levy of 122 West Broadway, New York City, who is a creditor in the above matter in the sum of $260.82.

Very truly yours,

GOLDMAN, MALTER & GOLDMAN
BY

TG:EC
1253

Defendants' Exhibit F,

PHOTOSTATIC COPY OF SIGNATURES.

(Opposite) ☞

9/10

10/11 } Schwartz
11/12 } Zucker

9133

12/1

1/2 } Reback & Mantis
2/3 } D.D. 4-5049

3/4 } A. Kreischman 4-321

4/5

U.S. Dist. Court
S.D. of N.Y.

Defendants' Exhibit G.

3088 Re: United States v. Samuel Kandell, et al.

Approved: Morris E. Spector
Assistant United States Attorney

Before: Honorable Garrett W. Cotter,
United States Commissioner for the Southern District of New York

Complaint: Violation of Section 52 (b), Title 11, U. S. Code; Section 88, Title 18, U. S. Code.

3089 UNITED STATES OF AMERICA

v.

AARON KREISELMAN, SAM RIBACH, ABRAHAM SCHWARTZ, SAMUEL KANDELL and PHILIP COHEN,

Defendants.

Southern District of New York:

LEONARD L. JUSKOW, being duly sworn, deposes and says: that he is a Special Agent of the Federal Bureau of
3090 Investigation, United States Department of Justice, and upon information and belief alleges and charges as follows:

That heretofore, to wit, on or about the 25th day of March, 1937, at the Southern District of New York, Aaron Kreiselman, Sam Ribach, Abraham Schwartz, Samuel Kandell and Philip Cohen, the defendants herein, unlawfully, wilfully and knowingly conspired, confederated and agreed together and with each other and with divers other persons, to commit an offense against the United States, that is to say, to violate Section 52 (b) of Title 11, U. S. Code.

Defendants' Exhibit G.

OVER ACT

That in pursuance of said conspiracy and to effect the objects thereof, at the Southern District of New York and within the jurisdiction of this Court, Aaron Kreiselman, Sam Ribach, Abraham Schwartz, Samuel Kandell and Philip Cohen, the defendants herein, on or about the 25th day of March, 1937, met at the offices of the Dry Goods & Furnishings Association, 175 Fifth Avenue, New York, New York.

Against the peace of the United States and their dignity and contrary to the form of the Statute of the United States in such case made and provided (Title 11, Section 52 (b), U. S. Code; Title 18, Section 88, U. S. Code).

The sources of deponent's information, and the grounds for his belief, are investigations made by him in the course of his official duties.

WHEREFORE, deponent prays that a warrant may issue for the apprehension of the above-named defendants, and that they may be arrested and imprisoned or bailed as the case may be.

Leonard L. Juskow

Sworn to before me this
23rd day of April, 1938.

Garrett Cotter
United States Commissioner
Southern District of New York

Defendants' Exhibit G.

3094 Separate warrants to apprehend were issued joining Samuel Kandell & Philip Cohen, Aaron Kreiselman, Sam Ribach and Abraham Schwartz.

C13-479
#50066

The following notation appeared on the first warrant:

Kandell

Defendant waives examination held to await the action of the Grand Jury.

Bail $500.00

3095 Dated, New York, April 25, 1938

Garrett W. Cotter
United States Commissioner, Southern District of New York

Cohen dismissed
on motion Spector
4/25/38

Garrett W. Cotter
United States Commissioner, Southern District of New York

3096 Received this warrant the 23rd day of April, 1938 at New York City and executed same by arresting the within named Samuel Kandell at New York City on the 25th day of April, 1938 and have his body now in Court as within commanded.

John J. Kelly
United States Marshal.
Southern District of New York

The body of the warrant contained the following:

Samuel Kandell and Philip Cohen "conspired to forbear to act in a bankruptcy proceeding, in violation of Section 88, Title 18, U. S. Code, and Section 52 (b), Title 11, U. S. Code.

Defendants' Exhibit G.

FINAL COMMITMENT 3097

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES

vs.

SAMUEL KANDELL

charged with violation of

Sec. 52 (b) Title 11 U. S. C.

Sec. 88 " 18 U. S. C. 3098

Vio. Bankruptcy Act

Defendant duly arraigned before me 4/25 1938, and, after having been informed of the charge against and right to aid of counsel, waived examination, it is

Ordered that said defendant be held to answer to the charge and any order of the court and that bail be fixed in the sum of $500 and that he be committed to the custody of the United States Marshal for the Southern District of New York, and by said Marshal duly delivered to the 3099 custody of the Warden of the Federal Detention Head-

Defendants' Exhibit G.

3100 quarters in the Borough of Manhattan, City of New York, until such bail be given.

Dated, New York, N. Y., 4/25 1938.

Garrett W. Cotter
United States Commissioner for the
Southern District of New York.

Defendant having given bail, it is ordered that he be
3101 released from custody.

Dated, New York, N. Y., 4/25 1938.

Garrett W. Cotter
United States Commissioner for the
Southern District of New York

C13-479

3102

Notice of Appeal and Grounds of Appeal—Appellant Martin M. Goldman.

3103

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA

—against—

MARTIN M. GOLDMAN

Name and address of appellant: Martin M. Goldman, 765 Eastern Parkway, Brooklyn, New York.

3104

Name and address of appellant's attorney: Harold H. Corbin, 15 Broad Street, New York City.

Offense: Unlawfully conspiring to act and forebear to act in bankruptcy proceedings in violation of Section 88 Title 18 United States Code; conspiring to violate 29(b) (5) of the National Bankruptcy Act.

Date of judgment: July 26th, 1940.

Brief description of judgment or sentence: Eighteen (18) months and fined $25.00. Payment of fine remitted. Bail fixed at $1000.00 pending appeal. Paroled to July 29th, 1940 in custody of counsel to give bail.

Name of prison where now confined if not on bail: Appellant is now at liberty paroled in custody of his counsel.

3105

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Second Circuit, from the judgment above mentioned, on the grounds set forth below.

Pursuant to Rule 5 of the Supreme Court rules I hereby serve notice that I do not elect to enter upon the service of the sentence pending appeal.

Dated, July 29th, 1940.

MARTIN M. GOLDMAN,
Appellant.

Notice of Appeal and Grounds of Appeal—Appellant Martin M. Goldman.

3106

To:

HON. JOHN T. CAHILL,
United States Attorney.

HON. GEORGE J. FOLLMER,
Clerk of the United States District Court.

CLERK OF THE CIRCUIT COURT OF APPEALS,
Second Circuit.

3107

GROUNDS O APPEAL.

(1) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, to which ruling of the Court an exception was duly taken by the defendant-appellant.

(2) The Court erred in entering judgment against the defendant-appellant upon the verdict of the jury in this case.

(3) The Court erred in denying the motion made at the end of the Government's affirmative case to dismiss the indictment upon the ground that the Government had failed
3108 to prove a case against the defendant-appellant, to which ruling of the Court an exception was duly taken.

(4) The Court erred in denying the motion made at the close of the entire case to dismiss the indictment upon the ground that the Government had failed to prove a case against the defendant-appellant, and upon the ground that the crime alleged in the indictment had not been proven nor that it could be the subject of prosecution, to which ruling an exception was duly noted.

(5) The Court erred in admitting into evidence incompetent, irrelevant and immaterial testimony over the objec-

3109

tions and exceptions of counsel for the defendant-appellant, which objections were urged at the time of its submission.

(6) The Court erred in ruling upon a hearing preliminary to the trial that certain evidence was not obtained in violation of the Constitutional rights of the defendants and that it was not obtained in violaion of Sections 151 and 605 of Title 47 of the United States Code ("Communications Act of 1934").

(7) The Court erred in admitting into evidence certain stenographic notes and transcripts of alleged conversations and portions of alleged conversations between certain of the 3110
defendants and others and in permitting testimony to be adduced by the Government with regard to the subject of such conversations and the contents of such stenographic notes and transcripts in the face of proof upon the trial and upon the preliminary hearing establishing that said evidence was obtained by illegal means in violation of the Constitutional rights of the defendants and in violation of Sections 151 and 605 of Title 47 of the United States Code ("Communications Act of 1934").

(8) The Court erred in admitting into evidence against the defendant-appellant the testimony of certain witnesses 3111
as to conversations and acts of persons other than defendant-appellant not in his presence or with his knowledge, and certain exhibits purporting to record conversations of, or statements made by, persons other than the defendant-appellant, not in the presence of defendant-appellant and without his knowledge, over the objection and exception of the defendant-appellant.

(9) The Court erred in deciding questions of law arising during the course of the trial.

Notice of Appeal and Grounds of Appeal—Appellant Martin M. Goldman.

3112

(10) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial on all of the grounds provided by law.

(11) The Court erred in certain of its rulings as to the admissibility of evidence during the course of the trial of the action, to which exception was duly taken by counsel for the defendant-appellant.

(12) The Court erred in permitting the jury to take with it to the jury room during the course of its deliberations certain exhibits introduced in evidence, to wit, certain
3113 transcripts of alleged conversations and portions of alleged conversations of the defendants and others claimed to have been overheard by Special Agents of the Federal Bureau of Investigation of the United States Government although the same were illegally obtained as aforesaid and although the same contained certain irrelevant and collateral matter prejudicial to defendant-appellant and not admitted in evidence.

(13) The Court erred in denying the request of counsel for defendant-appellant, to inspect certain notes of one Turner, a witness for the Government, which notes pur-
3114 ported to contain memoranda of the aforesaid alleged conversations and portions of such alleged conversations of the defendants and others claimed to have been overheard as aforesaid, despite the fact that the said witness, Turner, testified that his said notations or memoranda varied from the transcripts of the said alleged conversations and portions of such alleged conversations introduced into evidence by the Government as aforestated.

(14) The Court erred in denying the request of counsel for the defendant-appellant to have marked for identification a certain document from which counsel for the Govern-

3115

ment read in cross-examining a witness for the defendant-appellant, to wit, Samuel I. Kandell, and in refusing permission to defendant-appellant's counsel to inspect the said document, to all of which exception was duly taken by counsel for the defendant-appellant.

(15) The Court erred in admitting into evidence against the defendants the said stenographic notes and transcripts and in permitting witnesses for the Government to testify as to certain alleged conversations and portions of alleged conversations between certain of the defendants and others overheard as aforesaid, despite the fact that the proof 3116
established that the mechanical means through which such alleged conversations are claimed to have been heard only permitted the hearing of excerpts from, and snatches of, such alleged conversations and although the proof established that to a substantial degree the said conversations and statements claimed so to have been heard by the witnesses for the Government were inaudible, distorted, unintelligible, incomplete and garbled.

(16) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, among other grounds, because of certain improper statements made by 3117
counsel for the Government during the course of the trial and in his summation to the jury, to which exception was duly noted.

(17) Other prejudicial and reversible errors were committed as appear in the transcript of the testimony on the trial and the record of proceedings had herein to which more specific reference will be made in the assignments of error to be filed hereinafter pursuant to the Rules and Statutes in such case made and provided.

(18) The foregoing grounds of appeal are not intended and shall not be construed in any way to limit or define the scope of the assignment of errors to be hereinafter filed.

Notice of Appeal and Grounds of Appeal—Appellant Martin M. Goldman.

3118

(19) The defendant herein reserves the right to file other and additional grounds of appeal.

Dated, July 29, 1940.

MARTIN M. GOLDMAN,
Appellant.

To:

HON. JOHN T. CAHILL,
3119 United States Attorney.

HON. GEORGE J. FOLLMER,
Clerk of United States District Court,
Southern District of New York.

CLERK OF THE CIRCUIT COURT OF APPEALS,
Second Circuit.

3120

Notice of Appeal and Grounds of Appeal—Appellant Theodore Goldman.

3121

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA

—against—

THEODORE GOLDMAN

Name and address of appellant: Theodore Goldman, 1245 Eastern Parkway, Brooklyn, New York.

3122

Name and address of appellant's attorney: Harold H. Corbin, 15 Broad Street, New York City.

Offense: Unlawfully conspiring to act and forebear to act in bankruptcy proceedings in violation of Section 88 Title 18 United States Code; conspiring to violate 29(b)(5) of the National Bankruptcy Act.

Date of judgment: July 26th, 1940.

Brief description of judgment or sentence: Eighteen (18) months and fined $25.00. Payment of fine remitted. Bail fixed at $1000.00 pending appeal. Paroled to July 29th, 1940 in custody of counsel to give bail.

Name of prison where now confined if not on bail: Appellant is now at liberty paroled in custody of his counsel.

3123

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Second Circuit, from the judgment above mentioned, on the grounds set forth below.

Pursuant to Rule 5 of the Supreme Court rules I hereby serve notice that I do not elect to enter upon the service of the sentence pending appeal.

Dated, July 29th, 1940.

THEODORE GOLDMAN,
Appellant.

Notice of Appeal and Grounds of Appeal—Appellant Theodore Goldman.

3124

To:

HON. JOHN T. CAHILL,
United States Attorney.

HON. GEORGE J. FOLLMER,
Clerk of United States District Court.

CLERK OF THE CIRCUIT COURT OF APPEALS,
Second Circuit.

3125

GROUNDS OF APPEAL.

(1) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, to which ruling of the Court an exception was duly taken by the defendant appellant.

(2) The Court erred in entering judgment against the defendant-appellant upon the verdict of the jury in this case.

(3) The Court erred in denying the motion made at the end of the Government's affirmative case to dismiss the indictment upon the ground that the Government had failed
3126 to prove a case against the defendant-appellant, to which ruling of the Court an exception was duly taken.

(4) The Court erred in denying the motion made at the close of the entire case to dismiss the indictment upon the ground that the Government had failed to prove a case against the defendant-appellant, and upon the ground that the crime alleged in the indictment had not been proven nor that it could be the subject of prosecution, to which ruling an exception was duly noted.

3127

(5) The Court erred in admitting into evidence incompetent, irrelevant and immaterial testimony over the objections and exceptions of counsel for the defendant-appellant, which objections were urged at the time of its submission.

(6) The Court erred in ruling upon a hearing preliminary to the trial that certain evidence was not obtained in violation of the Constitutional rights of the defendants and that it was not obtained in violaion of Sections 151 and 605 of Title 47 of the United States Code ("Communications Act of 1934").

3128

(7) The Court erred in admitting into evidence certain stenographic notes and transcripts of alleged conversations and portions of alleged conversations between certain of the defendants and others and in permitting testimony to be adduced by the Government with regard to the subject of such conversations and the contents of such stenographic notes and transcripts in the face of proof upon the trial and upon the preliminary hearing establishing that said evidence was obtained by illegal means in violation of the Constitutional rights of the defendants and in violation of Sections 151 and 605 of Title 47 of the United States Code ("Communications Act of 1934").

3129

(8) The Court erred in admitting into evidence against the defendant-appellant the testimony of certain witnesses as to conversations and acts of persons other than defendant-appellant not in his presence or with his knowledge, and certain exhibits purporting to record conversations of, or statements made by, persons other than the defendant-appellant, not in the presence of defendant-appellant and without his knowledge, over the objection and exception of the defendant-appellant.

(9) The Court erred in deciding questions of law arising during the course of the trial.

Notice of Appeal and Grounds of Appeal—Appellant Theodore Goldman.

3130

(10) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial on all of the grounds provided by law.

(11) The Court erred in certain of its rulings as to the admissibility of evidence during the course of the trial of the action, to which exception was duly taken by counsel for the defendant-appellant.

(12) The Court erred in permitting the jury to take with it to the jury room during the course of its deliberations certain exhibits introduced in evidence, to wit, certain
3131 transcripts of alleged conversations and portions of alleged conversations of the defendants and others claimed to have been overheard by Special Agents of the Federal Bureau of Investigation of the United States Government although the same were illegally obtained as aforesaid and although the same contained certain irrelevant and collateral matter prejudicial to defendant-appellant and not admitted in evidence.

(13) The Court erred in denying the request of counsel for defendant-appellant, to inspect certain notes of one Turner, a witness for the Government, which notes pur-
3132 ported to contain memoranda of the aforesaid alleged conversations and portions of such alleged conversations of the defendants and others claimed to have been overheard as aforesaid, despite the fact that the said witness, Turner, testified that his said notations or memoranda varied from the transcripts of the said alleged conversations and portions of such alleged conversations introduced into evidence by the Government as aforestated.

(14) The Court erred in denying the request of counsel for the defendant-appellant to have marked for identification a certain document from which counsel for the Govern-

3133

ment read in cross-examining a witness for the defendant-appellant, to wit, Samuel I. Kandell, and in refusing permission to defendant-appellant's counsel to inspect the said document, to all of which exception was duly taken by counsel for the defendant-appellant.

(15) The Court erred in admitting into evidence against the defendants the said stenographic notes and transcripts and in permitting witnesses for the Government to testify as to certain alleged conversations and portions of alleged conversations between certain of the defendants and others overheard as aforesaid, despite the fact that the proof 3134
established that the mechanical means through which such alleged conversations are claimed to have been heard only permitted the hearing of excerpts from, and snatches of, such alleged conversations and although the proof established that to a substantial degree the said conversations and statements claimed so to have been heard by the witnesses for the Government were inaudible, distorted, unintelligible, incomplete and garbled.

(16) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, among other grounds, because of certain improper statements made by 3135
counsel for the Government during the course of the trial and in his summation to the jury, to which exception was duly noted.

(17) Other prejudicial and reversible errors were committed as appear in the transcript of the testimony on the trial and the record of proceedings had herein to which more specific reference will be made in the assignments of error to be filed hereinafter pursuant to the Rules and Statutes in such case made and provided.

Notice of Appeal and Grounds of Appeal—Appellant Theodore Goldman.

3136

(18) The foregoing grounds of appeal are not intended and shall not be construed in any way to limit or define the scope of the assignment of errors to be hereinafter filed.

(19) The defendant herein reserves the right to file other and additional grounds of appeal.

Dated, July 29, 1940.

THEODORE GOLDMAN,
Appellant.

3137

To:

HON. JOHN T. CAHILL,
United States Attorney.

HON. GEORGE J. FOLLMER,
Clerk of United States District Court,
Southern District of New York.

CLERK OF THE CIRCUIT COURT OF APPEALS,
Second Circuit.

3138

Notice of Appeal and Grounds of Appeal—Appellant Jacob P. Shulman.

3139

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA

—against—

JACOB P. SHULMAN

Name and address of appellant: Jacob P. Shulman.

Name and address of appellant's attorneys: Phillips, Mahoney & Fielding, 51 Chambers Street, New York City. 3140

Offense: Unlawfully conspiring to act and forebear to act in bankruptcy proceedings in violation of Section 88 Title 18 United States Code; conspiring to violate 29(b) (5) of the National Bankruptcy Act.

Date of judgment: July 26th, 1940.

Brief description of judgment or sentence: Eighteen (18) months and fined $25.00. Payment of fine remitted. Bail fixed at $1000.00 pending appeal. Paroled to July 29th, 1940 in custody of counsel to give bail.

Name of prison where now confined if not on bail: Appellant is now at liberty paroled in custody of his counsel. 3141

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Second Circuit, from the judgment above mentioned, on the grounds set forth below.

Pursuant to Rule 5 of the Supreme Court rules I hereby serve notice that I do not elect to enter upon the service of the sentence pending appeal.

Dated, July 29th, 1940.

JACOB P. SHULMAN,
Appellant.

Notice of Appeal and Grounds of Appeal—Appellant Jacob P. Shulman.

3142

To:

HON. JOHN T. CAHILL,
United States Attorney.

HON. GEORGE J. FOLLMER,
Clerk of the United States District Court.

CLERK OF THE CIRCUIT COURT OF APPEALS,
Second Circuit.

GROUNDS OF APPEAL.

3143 (1) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, to which ruling of the Court an exception was duly taken by the defendant-appellant.

(2) The Court erred in entering judgment against the defendant-appellant upon the verdict of the jury in this case.

(3) The Court erred in denying the motion made at the end of the Government's affirmative case to dismiss the indictment upon the ground that the Government had failed to prove a case against the defendant-appellant, to which ruling of the Court an exception was duly taken.

3144 (4) The Court erred in denying the motion made at the close of the entire case to dismiss the indictment upon the ground that the Government had failed to prove a case against the defendant-appellant, and upon the ground that the crime alleged in the indictment had not been proven nor that it could be the subject of prosecution, to which ruling an exception was duly noted.

(5) The Court erred in admitting into evidence incompetent, irrelevant and immaterial testimony over the objections and exceptions of counsel for the defendant-appellant, which objections were urged at the time of its submission.

(6) The Court erred in ruling upon a hearing preliminary to the trial that certain evidence was not obtained in

3145

violation of the Constitutional rights of the defendants and that it was not obtained in violation of Sections 151 and 605 of Title 47 of the United States Code ("Communications Act of 1934").

(7) The Court erred in admitting into evidence certain stenographic notes and transcripts of alleged conversations and portions of alleged conversations between certain of the defendants and others and in permitting testimony to be adduced by the Government with regard to the subject of such conversations and the contents of such stenographic notes and transcripts in the face of proof upon the trial and upon the preliminary hearing establishing that said evidence 3146
was obtained by illegal means in violation of the Constitutional rights of the defendants and in violation of Sections 151 and 605 of Title 47 of the United States Code ("Communications Act of 1934").

(8) The Court erred in admitting into evidence against the defendant-appellant the testimony of certain witnesses as to conversations and acts of persons other than defendant-appellant not in his presence or with his knowledge, and certain exhibits purporting to record conversations of, or statements made by, persons other than the defendant-appellant, not in the presence of defendant-appellant and 3147
without his knowledge, over the objection and exception of the defendant-appellant.

(9) The Court erred in deciding questions of law arising during the course of the trial.

(10) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial on all of the grounds provided by law.

(11) The Court erred in certain of its rulings as to the admissibility of evidence during the course of the trial of the action, to which exception was duly taken by counsel for the defendant-appellant.

(12) The Court erred in permitting the jury to take with

3148 it to the jury room during the course of its deliberations certain exhibits introduced in evidence, to wit, certain transcripts of alleged conversations and portions of alleged conversations of the defendants and others claimed to have been overheard by Special Agents of the Federal Bureau of Investigation of the United States Government although the same were illegally obtained as aforesaid and although the same contained certain irrelevant and collateral matter prejudicial to defendant-appellant and not admitted in evidence.

3149 (13) The Court erred in admitting into evidence against the defendants the said stenographic notes and transcripts and in permitting witnesses for the Government to testify as to certain alleged conversations and portions of alleged conversations between certain of the defendants and others overheard as aforesaid, despite the fact that the proof established that the mechanical means through which such alleged conversations are claimed to have been heard only permitted the hearing of excerpts from, and snatches of, such alleged conversations and although the proof established that to a substantial degree the said conversations and statements claimed so to have been heard by the wit-

3150 nesses for the Government were inaudible, distorted, unintelligible, incomplete and garbled.

(14) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, among other grounds, because of certain improper statements made by counsel for the Government during the course of the trial and in his summation to the jury, to which exception was duly noted.

(15) Other prejudicial and reversible errors were committed as appear in the transcript of the testimony on the trial and the record of proceedings had herein to which more specific reference will be made in the assignments of error to be filed hereinafter pursuant to the Rules and

3151

Statutes in such case made and provided.

(16) The Court erred in refusing to admit into evidence certain memorandum made by the witness Kandell, which said memorandum was made by Kandell at the time of a certain alleged meeting of creditors, the denial of said admission being prejudicial to the interests of this defendant-appellant.

(17) The foregoing grounds of appeal are not intended and shall not be construed in any way to limit or define the scope of two assignment of errors to be hereinafter filed.

3152

(18) The defendant herein reserves the right to file other and additional grounds of appeal.

Dated, July 29, 1940.

JACOB P. SHULMAN,
Appellant.

To:

HON. JOHN T. CAHILL,
United States Attorney.

3153

HON. GEORGE J. FOLLMER,
Clerk of United States District Court,
Southern District of New York.

CLERK OF THE CIRCUIT COURT OF APPEALS,
Second Circuit.

Assignment of Errors of Defendants-Appellants Martin M. Goldman and Theodore Goldman.

3154

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL

3155

Now come defendants-appellants Martin M. Goldman and Theodore Goldman, and each, for himself, for his Assignment of Errors on the appeal duly taken by him from the judgment of conviction rendered July 26th, 1940, respectfully show:

1. The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, on the ground that the verdict was contrary to law, contrary to the evidence, and contrary to the weight of the evidence.

2. The Court erred in entering judgment against each of

3156

these defendants upon the verdict of the jury in this case.

3. The Court erred in denying the motion made on behalf of each of these defendants at the end of the Government's affirmative case to dismiss the indictment upon the ground that the Government had failed to prove a case against such defendants.

4. The Court erred in denying the motion made on behalf of each of these defendants at the close of the entire case to dismiss the indictment upon the ground that the Government had failed to prove a case against such defendants and upon the ground that the crime alleged in the indictment had not been proven.

Assignment of Errors of Defendants-Appellants Martin M. Goldman and Theodore Goldman.

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5. The Court erred in denying the motion of each of these defendants preliminary to trial to suppress evidence obtained by Special Agents of the Federal Bureau of Investigation of the United States Government on April 7th, 14th, 21st and 26th, all in the year 1937, and in making the following findings of fact and in arriving at the following conclusions of law in connection with the issues presented by the said motion to suppress;

A. That the detectaphone placed outside of the wall separating the office of defendant-appellant Schulman from the adjoining room was installed lawfully and not in violation of the constitutional rights of defendants-appellants. 3158

B. That the evidence of conversations overheard by the Special Agents of the Federal Bureau of Investigation by means of the said device was admissible and competent and should not be suppressed and that admission of such evidence did not violate the defendants' constitutional or statutory rights.

C. That the unlawful entry into the office of defendant-appellant Schulman on the night of April 6th, 1937, did not aid the said Special Agents of the Federal Bureau of Investigation in attaching the device to the said wall on April 7th, 1937 or in obtaining evidence by means thereof. 3159

D. That if the conversations heard over the said listening device were relevant to the issues in the above case, the same would be admissible as testimony upon the trial of the said action and that the objections of defendants-appellants to the said testimony upon the trial on the ground of invasion of their constitutional rights and violation of the laws and statutes of the United States of America would not be well taken and would be overruled.

E. "I will therefore overrule the motion of the defendants to suppress the testimony insofar as the testimony was obtained over the listening device that was attached to the

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wall in 1508; that I will also overrule the motion of the defendants for the suppression of any testimony thus far shown, for the reason that the testimony shows, without conflict, that no testimony or evidence of any kind was obtained by the Government over the device or through the device that had been installed first, known as the carbon device, and by which they had unlawfully entered the office of the defendant at 1509."

6. Upon the Preliminary Hearing, viz: the motion to suppress evidence alleged to have been illegally obtained, the Court erred in denying the request of counsel for each
3161 of these defendants to inspect certain pencil notes made by Harold O. Schroeder, then a Special Agent of the Federal Bureau of Investigation, and certain typewritten notes prepared therefrom by the said Schroeder (marked Petitioner's Exhibits 2 and 3 for Identification).

7. Upon the said Preliminary Hearing, the Court erred in denying the request of counsel for each of these defendants to inspect certain pencil notes made by Harold P. Turner, then a Special Agent of the Federal Bureau of Investigation, and certain typewritten notes prepared therefrom by the said Turner (marked Petitioner's Exhibit 5 for
3162 Identification).

8. Upon the said Preliminary Hearing, the Court erred in denying the request of counsel for each of these defendants to inspect certain pencil notes made by Sidney S. Rubenstein, then a Special Agent of the Federal Bureau of Investigation, and certain typewritten notes prepared therefrom by the said Rubenstein.

9. The Court erred on said Preliminary Hearing in sustaining the objection of the Government to the production, pursuant to the request of counsel for each of these defendants, of correspondence between Harold P. Turner, Special Agent of the Federal Bureau of Investigation, called by

Assignment of Errors of Defendants-Appellants Martin M. Goldman and Theodore Goldman.

3163

the Government as a witness and the United States Attorney for the Southern District of New York, and in making the following ruling:

"The Court: Well, I don't think those letters will be competent or that they can throw any light on it or that they will be required, so I will sustain the objection."

10. The Court erred in excluding competent evidence offered by defendants and in admitting incompetent, irrelevant and immaterial testimony over the objection and exception of counsel for defendants as follows: 3164

(Upon cross-examination of Robert Hoffman, witness in behalf of the Government:)

"Q. Let me get one subject cleaned up as quickly as I can, and I think I can do it in one question: Was there anything from the beginning to the end of the Hymowitz matter that Theodore Goldman did that was wrong, so far as you personally know; just yes or no to that?

Mr. Walsh: I object to the form of the question. That is a question for the jury to decide from the evidence elicited throughout the whole trial. 3165

The Court: I sustain the objection.

Mr. Corbin: I respectfully except."

* * * * * *

"Q. Tell me, you knew it was a perfectly proper request? A. A proper request it was.

Q. But you didn't like it? A. No, I thought it was wholly unnecessary. Wait until I get through, gentlemen.

The Court: Just a moment.

Mr. Corbin: He has answered the question, your Honor.

The Court: No, he didn't complete his answer. Let him answer the question, and as long as it is responsive to your question, I will allow it, but if it becomes irresponsive I will not.

Mr. Corbin: He has answered it categorically.

The Court: He is trying to make an explanation. Go ahead.

(Continued.)

A. I told Mr. Kandell and Theodore Goldman it was wholly unnecessary because I saw no complications there. Further, that there was a small estate involved, and still further, they might have access to any information they might desire. I told them they could examine any of the debtor's papers or books or records, which the assignee had or the debtor might furnish.

Mr. Corbin: I move to strike out the answer as not responsive in the slightest degree.

The Court: Motion overruled.

Mr. Corbin: Exception."

* * * * * *

"Q. You were there to trap Schulman?

Mr. Walsh: I object to that. That calls for a legal conclusion. That opens up a new door here.

The Court: Yes, I sustain the objection.

Mr. Fielding: Exception."

* * * * *

(Upon Redirect Examination of Gabriel Wishbow, Witness on Behalf of the Government:)

"Q. Yes. Well, I will show you them in a moment. May I ask you this while we are waiting for that: Am I correct when I said—when I show you this: 'The deponent has read the affidavit of Robert

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Hoffman which is hereto annexed. I have read the statements contained therein which refer to a certain meeting of the creditors held at the office of the Dry Goods Furnishings Association at 175 Fifth Avenue, New York City, on March 25, 1937, and corroborate same insofar as it relates to me, especially as to the conversations had between Mr. Hoffman and Mr. Goldman in my presence and also in respect to the conversations had amongst Mr. Kandell, Philip Cohen, Mr. Samuel Goldstein, Mr. Morton Goldman of the firm of Goldman, Malter & Goldman, Mr. A. Kreiselman, Mr. Schwartz of the firm of 3170
Schwartz & Zuckerman and Mr. Ribach of the firm of Ribach & Mantis.

Now does that refresh your recollection that you did appear and read the affidavits which Mr. Hoffman had prepared at the time and corroborated what Mr. Hoffman had said in his affidavit when he was preparing them in order to knock out the petition in bankruptcy which had been filed on the same day?

Mr. Corbin: Now just a moment. I object to it. The paper is an unsigned paper apparently, not that that in itself would make it void as something from 3171
which recollection can be refreshed, but the testimony of the witness so far is that it was not prepared in his presence, that Hoffman prepared it and 'phoned for him to come over so that the language which was read obviously is not the language of the witness. Therefore, I see in what he has read, in connection with the surrounding facts of its preparation, nothing which can properly be used in this examination by the Government.

The Court: I will overrule the objection.

Mr. Corbin: Exception.

172 Q. Is that a fact? A. May I refer to my—

Mr. Walsh: Will you read the question—

Q. I will give you that in a second. A. Well, in order to answer your question, may I refer to my copies?

Q. Well, will you answer the question that I have asked you first? A. Well, that will enable me to answer it.

Q. Does that refresh your recollection concerning the fact that you were there on April the 3rd, 1937, when these affidavits were prepared? A. I was there

173 on April 3, 1937, but I don't recall whether I was there when these affidavits were prepared or whether they were prepared before I came there.

Q. But is it true that you did, even if you weren't there when all of the affidavits were prepared, read the affidavit which was prepared by Mr. Hoffman and in which you said that you corroborated everything that was said by Mr. Hoffman on that occasion?

Mr. Corbin: Now just a moment. That is what I object to. The witness did not say—

Mr. Walsh: Well, I am asking him.

174 Mr. Corbin: And this paper does not purport to state that he corroborated everything that Mr. Hoffman said, because this is the paper that the witness did not sign. Therefore, it is not a statement of the witness in any record.

The Court: I will overrule the objection. If it is not he can so testify. As it is, he is asking him as I understand the question, if that is so. If it is not, he can so state. Of course, if he does not remember he can so state. Whatever he remembers the facts, he will testify to them. I will overrule the objection and let him answer.

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A. I don't recall whether that is the affidavit or not.

Q. Well, let me ask you this: Did you read over the affidavit that Mr. Hoffman had prepared on that occasion, on April the 3rd? A. I probably did."

* * * * *

(Upon cross-examination of Harold P. Turner, witness in behalf of the Government:)

"Q. And under those circumstances, as you knew them, that is entry was made without Schulman's consent in the night time; you knew, did you not, when you went in there, and when I say 'there' I mean Schulman's private office, you were doing an illegal act?

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Mr. Walsh: I object to the form of the question.

The Court: Sustained.

Mr. Corbin: I respectfully except.

So that the record may be clear may I ask a more direct question, because I want to make a point of this?

The Court: Yes.

Q. Did you or did you not know or believe when you entered Schulman's private office that night you were doing so without right?

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Mr. Walsh: I object to the form of that question, if your Honor please, too.

The Court: Yes. Objection sustained.

Mr. Corbin: I respectfully except."

* * * * *

(Upon direct examination of Sidney S. Rubenstein, witness in behalf of the Government:)

"Q. Mr. Rubenstein, did you hear the same things that were put down in the transcript?

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Mr. Corbin: The same objection.

The Court: I will overrule the objection.

Mr. Corbin: Exception.

A. I did."

* * * * *

(Upon cross examination of Sidney S. Rubenstein, witness in behalf of the Government:)

"Q. But this is good so far and I am asking you in the interim of several minutes, when they were all arguing, and the stenographer could not get it, that you could hear Goldman saying that to Hoffman, 3179 in words or substance, not once but several times?

Mr. Walsh: I object to that as assuming a state of facts not in evidence.

The Court: Objection sustained. Counsel has a right to ask him the question whether or not he heard it, but not to assume a few things preliminary to it. Objection sustained.

Mr. Corbin: Exception."

* * * * *

(On direct examination of defendant Martin M. Goldman:)

3180 "Q. Did you have any thought in your mind at that time that you could go to Schwartz, or any of the other creditors, and say to him in effect 'We are going to get one price for the stock, but we are going to keep that a secret from the rest of the creditors, and we are only going to divide among you creditors a smaller amount, and in order that you keep your mouths shut about it I will give you a $10-bill'. Did you have any such thought in your mind?

Mr. Walsh: I object to the form of the question.

Assignment of Errors of Defendants-Appellants Martin M. Goldman and Theodore Goldman.

3181

The Court: Sustained.

Mr. Corbin: Exception.

Q. Did you have any thought or belief that Schwartz or any of the other creditors would be susceptible to such a proposition?

Mr. Walsh: I object to that.

The Court: Yes. You are leading the witness.

Mr. Corbin: I am asking him for his intent, Judge.

Mr. Walsh: You didn't ask him, though.

The Court: You have been asking leading questions repeatedly, and I have sustained the objection. 3182

Mr. Corbin: Exception, your Honor."

11. The Court erred in admitting the testimony on behalf of the Government of Nathaniel Bodinger, Harold P. Turner and Sidney S. Rubenstein, Special Agents of the Federal Bureau of Investigation wherein they testified to conversations between the defendant Schulman and Robert Hoffman and others at said Schulman's private office, and to conversations of said defendant Schulman over the telephone in his private office, all in violation of the Constitutional rights of defendants and in violation of Sections 151 and 605 of Title 47 of the United States Code (Communications Act of 1934). 3183

12. The Court erred in admitting into evidence the transcribed notes of Nathaniel Bodinger, stenotypist in the employ of the United States Government, as a Special Agent of the Federal Bureau of Investigation, which notes were taken by the said witness of conversations between Schulman and others intercepted by the said witness, although the said transcriptions constituted only fragmentary portions of the said conversations and incomplete and garbled versions of the said conversations to such an extent as to

3184 render it impossible to ascertain the true context, meaning and purport of the said conversations.

13. The Court erred in deciding questions of law arising during the course of the trial, to wit:

The Court erred in sustaining the objection of counsel for the Government to the request of counsel for defendants-appellants to examine certain pencil notes and a memorandum dictated by Harold P. Turner, a witness for the Government, which notes and memorandum were made at the time, and immediately after, the occasions when the said witness listened in on conversations taking place in the 3185 private office of the defendant Schulman in April, 1937; the said witness Turner having refreshed his recollection by referring to said notes and memorandum prior to his taking the witness stand, and the said witness having admitted that there were possible variations between his notes and memorandum and those of the witness Nathan Bodinger, the stenotypist in the employ of the Government who testified in minute detail as to the conversations overheard by him as aforesaid.

* * * * * *

The Court erred in sustaining the objection of counsel 3186 for the Government to the request of counsel for defendants-appellants to inspect the notes made by Sidney S. Rubenstein, a witness for the Government, at the time he listened in on the said conversations in the private office of the defendant Schulman in April, 1937, although the said witness admitted that he had no recollection of said conversations and hence had refreshed his recollection from his said notes before taking the witness stand.

* * * * * *

The Court erred in granting the motion of counsel for the Government to admit as against each and all of the

3187

defendants-appellants all the conversations, of the defendants-appellants testified to upon the trial, whether or not made in the presence of each other, and the Court further erred in ruling that such conversations were admissible as against each and all of the defendants-appellants because, as the Court ruled, a conspiracy on the part of the defendants-appellants had been proven by the Government.

* * * * *

The Court erred in denying the request of counsel for defendants-appellants to examine and to have marked for identification a paper or document from which counsel for the Government read in the presence of the Court and the Jury in cross-examining Samuel I. Kandell, a witness called by defendants-appellants.

3188

14. The Court erred in refusing in its charge to give the following instructions requested by each of these defendants:

> "The placing of a hearing device against the outer wall of Schulman's office was likewise an invasion of his constitutional rights and any evidence thereby obtained must be disregarded.
>
> Insofar as the defendant Martin Goldman was present at any meeting in Schulman's office where such devices were used by Government agents to detect the conversation, his right to privacy was equally infringed.
>
> Insofar as any hearing device was used to listen to conversations, or parts thereof, taking place over Schulman's telephone, the act of listening was illegal and any evidence directly or indirectly obtained against any party to such telephone conversation must be disregarded."

3189

Assignment of Errors of Defendants-Appellants Martin M. Goldman and Theodore Goldman.

3190

15. The Court erred in admitting in evidence each of the following Government's exhibits, viz., 18, 18a, 19, 19a, 20 and 20a, and further in admitting in evidence any testimony concerning the conversations purporting to be reported in said exhibits.

16. The defendant Martin M. Goldman further assigns as error the admission in evidence against him of Government's Exhibits 21 and 21a, except so much of said exhibits as is contained on pages 5 to 16 of exhibit 21a purporting to report a conversation in the presence of said Martin M. Goldman, and further, in admitting in evidence any testi-
3191 mony concerning the conversations purporting to be reported in said exhibits other than the conversation purported to have been had in his presence.

17. The defendant Theodore Goldman assigns as error the admission in evidence against him of Government's exhibits 21 and 21a, and further in admitting in evidence any testimony concerning the conversations purporting to be reported in said exhibits.

And the said defendant Theodore Goldman further assigns as error the admission against him of testimony of the witnesses Nathaniel Bodinger, Harold P. Turner and
3192 Sidney S. Rubenstein wherein they testified to conversations purporting to have been had on April 7, 1937 between the defendants Schulman, Hoffman and Martin M. Goldman.

Assignment of Errors of Defendants-Appellants Martin M. Goldman and Theodore Goldman.

3193

WHEREFORE, said defendants-appellants, Martin M. Goldman and Theodore Goldman, for the errors aforestated, pray that said judgment of conviction be reversed.

Dated, New York, October 14th, 1940.

HAROLD H. CORBIN,
Attorney for Defendant-Appellant,
Martin M. Goldman,
Office & P. O. Address,
15 Broad Street,
Borough of Manhattan,
City of New York.

3194

MARTIN CONBOY,
Attorney for Defendant-Appellant,
Theodore Goldman,
Office & P. O. Address,
39 Broadway,
Borough of Manhattan,
City of New York.

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Assignment of Errors of Defendant-Appellant Jacob P. Shulman.

3196

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA

—against—

JACOB P. SHULMAN

3197 NOW COMES defendant-appellant Jacob P. Shulman, and for his Assignment of Errors on the appeal duly taken by him from the judgment of conviction rendered July 26th, 1940, respectfully shows:

1. The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, on the ground that the verdict was contrary to law, contrary to the evidence, and contrary to the weight of the evidence.

2. The Court erred in entering judgment against the defendant-appellant upon the verdict of the jury in this case.

3. The Court erred in denying the motion made at the
3198 end of the Government's affirmative case to dismiss the indictment upon the ground that the Government had failed to prove a case against the defendant-appellant.

4. The Court erred in denying the motion made at the close of the entire case to dismiss the indictment upon the ground that the Government had failed to prove a case against the defendant-appellant, and upon the ground that the crime alleged in the indictment had not been proven.

5. The Court erred in denying the motion of counsel for defendant-appellant preliminary to trial to suppress evidence obtained by Special Agents of the Federal Bureau of Investigation of the United States Government on April

7th, 14th, 21st and 26th, all in the year 1937, and in making the following findings of fact and in arriving at the following conclusions of law in connection with the issues presented by the said motion to suppress:

A. That the detectaphone placed outside of the wall separating the office of defendant-appellant Shulman from the adjoining room was installed lawfully and not in violation of the constitutional rights of defendant-appellant.

B. That the evidence of conversations overheard by the Special Agents of the Federal Bureau of Investigation by means of the said device was admissible and competent and should not be suppressed, and that admission of such evidence did not violate the defendant's constitutional and statutory rights.

C. That the unlawful entry into the office of defendant-appellant Shulman on the night of April 6th, 1937, did not aid the said Special Agents of the Federal Bureau of Investigation in attaching the device to the said wall on April 7th, 1937 or in obtaining evidence by means thereof.

D. That if the conversations heard over the said listening device were relevant to the issues in the above case, the same would be admissible as testimony upon the trial of the said action and that the objections of defendant-appellant as to the said testimony upon the trial on the ground of invasion of their constitutional rights and violation of the laws and statutes of the United States of America would not be well taken and would be overruled.

E. "I will therefore overrule the motion of the defendants to suppress the testimony insofar as the testimony was obtained over the listening device that was attached to the wall in 1508; that I will also overrule the motion of the defendants for the suppression of any testimony thus far shown, for the reason that the testimony shows, without conflict, that no testimony or evidence of any kind was

3202 obtained by the Government over the device or through the device that had been installed first, known as the carbon device, and by which they had unlawfully entered the office of the defendant at 1509."

6. Upon the Preliminary Hearing, viz.: the motion to suppress evidence alleged to have been illegally obtained, the Court erred in denying the request of counsel for defendant-appellant to inspect certain pencil notes made by Harold O. Schroeder, then a Special Agent of the Federal Bureau of Investigation, and certain typewritten notes prepared therefrom by the said Schroeder (marked 3203 Petitioner's Exhibits 2 and 3 for Identification).

7. Upon the said Preliminary Hearing, the Court erred in denying the request of counsel for defendant-appellant to inspect certain pencil notes made by Harold P. Turner, then a Special Agent of the Federal Bureau of Investigation, and certain typewritten notes prepared therefrom by the said Turner (marked Petitioner's Exhibit 5 for Identification).

8. Upon the said Preliminary Hearing, the Court erred in denying the request of counsel for defendant-appellant to inspect certain pencil notes made by Sidney S. Rubenstein, then a Special Agent of the Federal Bureau of In- 3204 vestigation and certain typewritten notes prepared therefrom by the said Rubenstein.

9. The Court erred on said Preliminary Hearing in sustaining the objection of the Government to the production, pursuant to the request of counsel for each of these defendants, of correspondence between Harold P. Turner, Special Agent of the Federal Bureau of Investigation, called by the Government as a witness and the United States Attorney for the Southern District of New York, and in making the following ruling:

> "The Court: Well, I don't think those letters will be competent or that they can throw any light

3205

on it or that they will be required, so I will sustain the objection."

10. The Court erred in excluding competent evidence offered by defendant-appellant and in admitting incompetent, irrelevant and immaterial testimony over the objection and exception of counsel for defendant-appellant, as follows:

(Upon cross examination of Robert Hoffman witness in behalf of the Government:)

"Q. Let me get one subject cleaned up as quickly as I can, and I think I can do it in one question. Was there anything from the beginning to the end of the Hymowitz matter that Theodore Goldman did that was wrong, so far as you personally know; just yes or no to that?

3206

Mr. Walsh: I object to the form of the question. That is a question for the jury to decide from the evidence elicited throughout the whole trial.

The Court: I sustain the objection.

Mr. Corbin: I respectfully except."

* * * * *

"Q. Tell me, you knew it was a perfectly proper request? A. A proper request it was.

3207

Q. But you didn't like it? A. No, I thought it was wholly unnecessary. Wait until I get through, gentlemen—

The Court: Just a moment.

Mr. Corbin: He has answered the question, your Honor.

The Court: No, he didn't complete his answer. Let him answer the question, and as long as it is responsive to your question, I will allow it, but if it becomes irresponsive I will not.

Mr. Corbin: He has answered it categorically.

The Court: He is trying to make an explanation. Go ahead.

(Continued.)

A. I told Mr. Kandell and Theodore Goldman it was wholly unnecessary because I saw no complications there. Further, that there was a small estate involved, and still further, they might have access to any information they might desire. I told them they could examine any of the debtor's papers or books or records, which the assignee had or the debtor might furnish.

Mr. Corbin: I move to strike out the answer as not responsive in the slightest degree.

The Court: Motion overruled.

Mr. Corbin: Exception."

* * * * * *

"Q. You were there to trap Schulman?

Mr. Walsh: I object to that. That calls for a legal conclusion. That opens up a new door here.

The Court: Yes, I sustain the objection.

Mr. Fielding: Exception."

* * * * *

(Upon Redirect Examination of Gabriel Wishbow, Witness on Behalf of the Government:)

"Q. Yes. Well, I will show you them in a moment. May I ask you this while we are waiting for that: Am I correct when I said—when I show you this: 'The deponent has read the affidavit of Robert Hoffman which is hereto annexed. I have read the statements contained therein which refer to a certain meeting of the creditors held at the office of the Dry Goods Furnishings Association at 175 Fifth Avenue, New York City, on March 25, 1937, and corroborate

3211

same insofar as it relates to me, especially as to the conversations had between Mr. Hoffman and Mr. Goldman in my presence and also in respect to the conversations had amongst Mr. Kandell, Philip Cohen, Mr. Samuel Goldstein, Mr. Morton Goldman of the firm of Goldman, Malter & Goldman, Mr. A. Kreiselman, Mr. Schwartz of the firm of Schwartz & Zuckerman and Mr. Ribach of the firm of Ribach & Mantis.

Now does that refresh your recollection that you did appear and read the affidavits which Mr. Hoffman had prepared at the time and corroborated what Mr. Hoffman had said in his affidavit when he was preparing them in order to knock out the petition in bankruptcy which had been filed on the same day?

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Mr. Corbin: Now just a moment, I object to it. The paper is an unsigned paper apparently, not that that in itself would make it void as something from which recollection can be refreshed, but the testimony of the witness so far is that it was not prepared in his presence, that Hoffman prepared it and 'phoned for him to come over so that the language which was read obviously is not the language of the witness. Therefore, I see in what he has read, in connection with the surrounding facts of its preparation, nothing which can properly be used in this examination by the Government.

3213

The Court: I will overrule the objection.

Mr. Corbin: Exception.

Q. Is that a fact? A. May I refer to my—

Mr. Walsh: Will you read the question—

Q. I will give you that in a second. A. Well, in order to answer your question, may I refer to my copies?

Q. Well, will you answer the question that I

3214

have asked you first? A. Well, that will enable me to answer it.

Q. Does that refresh your recollection concerning the fact that you were there on April the 3rd, 1937, when these affidavits were prepared? A. I was there on April 3, 1937, but I don't recall whether I was there when these affidavits were prepared or whether they were prepared before I came there.

Q. But is it true that you did, even if you weren't there when all of the affidavits were prepared; read the affidavit which was prepared by Mr. Hoffman and

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in which you said that you corroborated everything that was said by Mr. Hoffman on that occasion?

Mr. Corbin: Now just a moment. That is what I object to. The witness did not say—

Mr. Walsh: Well, I am asking him.

Mr. Corbin: And this paper does not purport to state that he corroborated everything that Mr. Hoffman said, because this is the paper that the witness did not sign. Therefore, it is not a statement of the witness in any record.

The Court: I will overrule the objection. If it is not he can so testify. As it is, he is asking him, as I understand the question, if that is so. If it is not, he can so state. Of course, if he does not remember he can so state. Whatever he remembers the facts, he will testify to them. I will overrule the objection and let him answer.

3216

A. I don't recall whether that is the affidavit or not.

Q. Well, let me ask you this: Did you read over the affidavit that Mr. Hoffman had prepared on that occasion, on April the 3rd? A. I probably did."

* * * * *

3217

(Upon cross examination of Harold P. Turner, witness in behalf of the Government:)

"Q. And under those circumstances, as you knew them, that is entry was made without Schulman's consent in the night time: you knew, did you not, when you went in there, and when I say 'there' I mean Schulman's private office, you were doing an illegal act?

Mr. Walsh: I object to the form of the question.

The Court: Sustained.

Mr. Corbin: I respectfully except.

3218

So that the record may be clear may I ask a more direct question, because I want to make a point of this?

The Court: Yes.

Q. Did you or did you not know or believe when you entered Schulman's private office that night you were doing so without right?

Mr. Walsh: I object to the form of that question, if your Honor please, too.

The Court: Yes, objection sustained.

Mr. Corbin: I respectfully except."

* * * * * *

3219

(Upon direct examination of Sidney S. Rubenstein, witness in behalf of the Government:)

"Q. Mr. Rubenstein, did you hear the same things that were put down in the transcript?

Mr. Corbin: The same objection.

The Court: I will overrule the objection.

Mr. Corbin: Exception.

A. I did".

* * * * * *

(Upon cross examination of Sidney S. Rubenstein, witness in behalf of the Government:)

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"Q. But this is good so far and I am asking you in the interim of several minutes, when they were all arguing, and the stenographer could not get it, that you could hear Goldman saying that to Hoffman, in words or substance, not once but several times?

Mr. Walsh: I object to that as assuming a state of facts not in evidence.

The Court: Objection sustained. Counsel has a right to ask him the question whether or not he heard it, but not to assume a few things preliminary to it. Objection sustained.

3221

Mr. Corbin: Exception."

(On direct examination of defendant Martin M. Goldman:)

"Did you have any thought in your mind at that time that you could go to Schwartz, or any of the other creditors, and say to him in effect 'We are going to get one price for the stock, but we are going to keep that a secret from the rest of the creditors, and we are only going to divide among you creditors a smaller amount, and in order that you keep your mouths shut about it I will give you a $10-bill. Did you have any such thought in your mind?

3222

Mr. Walsh: I object to the form of the question.

The Court: Sustained.

Mr. Corbin: Exception.

Q. Did you have any thought or belief that Schwartz or any of the other creditors would be susceptible to such a proposition?

Mr. Walsh: I object to that.

The Court: Yes. You are leading the witness.

Mr. Corbin: I am asking him for his intent, Judge.

Mr. Walsh: You didn't ask him, though.

3223

The Court: You have been asking leading questions repeatedly, and I have sustained the objection.

Mr. Corbin: Exception, your Honor."

11. The Court erred in admitting the testimony on behalf of the Government of Nathaniel Bodinger, Harold P. Turner and Sidney S. Rubenstein, Special Agents of the Federal Bureau of Investigation, wherein they testified to conversations between the defendant Martin M. Goldman, defendant-appellant and Robert Hoffman and others at defendant-appellant's private office, and to conversations of defendant-appellant over the telephone in his private office, all in violation of the Constitutional rights of defendant-appellant and in violation of Sections 151 and 605 of Title 47 of the United States Code (Communications Act of 1934).

3224

12. The Court erred in admitting into evidence the transcribed notes of Nathaniel Bodinger, stenotypist in the employ of the United States Government, as a Special Agent of the Federal Bureau of Investigation, which notes were taken by the said witness of conversations between defendant-appellant and others intercepted by the said witness, although the said transcriptions constituted only fragmentary portions of the said conversations and incomplete and garbled versions of the said conversations to such an extent as to render it impossible to ascertain the true context, meaning and purport of the said conversations.

3225

13. The Court erred in deciding questions of law arising during the course of the trial, to wit:

The Court erred in sustaining the objection of counsel for the Government to the request of counsel for defendant-appellant to examine certain pencil notes and a memorandum dictated by Harold P. Turner, a witness for the Government, which notes and memorandum were made at

3226 the time, and immediately after, the occasions when the said witness listened in on conversations taking place in the private office of the defendant-appellant in April, 1937; the said witness Turner having refreshed his recollection by referring to said notes and memorandum prior to his taking the witness stand, and the said witness having admitted that there were possible variations between his notes and memorandum and those of the witness Nathan Bodinger, the stenotypist in the employ of the Government who testified in minute detail as to the conversations overheard by him aforesaid.

3227 * * * * * *

The Court erred in sustaining the objection of counsel for the Government to the request of counsel for defendant-appellant to inspect the notes made by Sidney S. Rubenstein, a witness for the Government, at the time he listened in on the said conversations in the private office of the defendant-appellant in April, 1937, although the said witness admitted that he had no recollection of said conversations and hence had refreshed his recollection from his said notes before taking the witness stand.

* * * * * *

3228 The Court erred in granting the motion of counsel for the Government to admit as against each and all of the defendants-appellants all the conversations of the defendants-appellants testified to upon the trial, whether or not made in the presence of each other, and the Court further erred in ruling that such conversations were admissible as against each and all of the defendants-appellants because, as the Court ruled, a conspiracy on the part of the defendants-appellants had been proven by the Government.

* * * * * *

Assignment of Errors of Defendant-Appellant Jacob P. Shulman.

3229

The Court erred in denying the request of counsel for defendant-appellant to examine and to have marked for identification a paper or document from which counsel for the Government read in the presence of the Court and the Jury in cross-examining Samuel I. Kandell, a witness called by defendant-appellant.

14. The Court erred in refusing in its charge to give the following instructions requested by the defendant-appellant:

"The placing of a hearing device against the outer wall of Schulman's office was likewise an invasion of his constitutional rights and any evidence thereby obtained must be disregarded. 3230

That the alleged conspiracy to set aside a secret fund out of the estate assets of $400 was inaugurated on March 25, 1937 at a meeting of creditors which Jacob Shulman did not attend and who could have had no knowledge of it at that time.

That the fixation of any listening device and the accompanying apparatus on the outside wall of Shulman's office by which conversations in Shulman's office could be heard and recorded without his knowledge and consent was an invasion of the constitutional rights of Shulman. Evidence thus obtained should be disregarded. 3231

Insofar as any hearing device was used to listen to conversations, or parts thereof, taking place over Schulman's telephone, the act of listening was illegal and any evidence directly or indirectly obtained against any party to such telephone conversation must be disregarded."

15. The Court erred in admitting in evidence each of the following Government's exhibits, viz.: 18, 18a, 19, 19a,

3232

20 and 20a, and further in admitting in evidence any testimony concerning the conversations purporting to be reported in said exhibits.

16. Prejudicial and irremediable error was inadvertently committed by counsel for the United States Government in furnishing to the Jury during its deliberations certain incompetent, irrelevant and damaging evidence which the Court had excluded upon the trial but which was physically a part of Government's Exhibits 18A, 19A, 20A and 21A, and which should have been elided therefrom before permitting inspection of same by the Jury.

3233

WHEREFORE, said defendant-appellant, Jacob P. Shulman, for the errors aforestated, prays that said judgment of conviction be reversed.

Dated, New York, October 15th, 1940.

PHILLIPS, MAHONEY & FIELDING,
Attorneys for Defendant-Appellant,
Jacob P. Shulman,
Office & P. O. Address,
51 Chambers Street,
Borough of Manhattan,
New York City.

3234

Order Extending Time to October 15, 1940.

At a stated term of the United States District Court, held in and for the Southern District of New York, on the 19th day of August, 1940. 32

Present: HON. GASTON L. PORTERIE, *Justice.*

UNITED STATES OF AMERICA

—against—

MARTIN M. GOLDMAN, JACOB P. SHULMAN and THEODORE GOLDMAN,

Defendants. 323

This court having, in the absence of the trial judge in the above matter, summoned to appear before it the attorneys for the defendants herein and the United States Attorney for the Southern District of New York, with a view to giving directions for the filing of the assignment of errors and bill of exceptions in connection with the appeal herein, and the parties having duly appeared, and after having heard Bruno Schackner, Esq., of counsel for the United States; Warren C. Fielding, Esq., of counsel for the defendant, Jacob P. Shulman, and Edward J. Bennett, Esq., of counsel for the defendants, Martin M. Goldman and Theodore Goldman, and due deliberation having been had thereon, and upon agreement of the respective counsel, it is 323

ORDERED that the time of the defendants herein to file their assignments of error and to settle and file the bill of exceptions herein be, and the same hereby is, extended to and including the 15th day of October, 1940.

G. L. PORTERIE.
U. S. D. J.

Order Extending Time to October 18, 1940.

3238

At a Stated Term of the United States Circuit Court of Appeals, held in and for the Second Circuit on the 14th day of October, 1940.

Present: HON. HARRIE B. CHASE, *Circuit Judge.*

UNITED STATES OF AMERICA

—against—

MARTIN M. GOLDMAN, et al.,

3239 Defendants.

Upon the annexed affidavit of Edward J. Bennett, verified October 14, 1940, and the stipulation of counsel hereto annexed, it is

ORDERED that the time of the defendants herein to file their assignments of error and to settle and file their bill of exceptions herein be and the same hereby is extended to and including the 18th day of October, 1940, and that the term of court be similarly extended for such purpose.

3240

HARRIE B. CHASE,
U. S. C. J.

Order Extending Time to October 25, 1940.

UNITED STATES CIRCUIT COURT OF APPEALS, 3241

FOR THE SECOND CIRCUIT.

C-107-2.

UNITED STATES OF AMERICA,

Appellee,

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN,

Appellants. 3242

IT IS HEREBY STIPULATED, subject to the approval of the Court, that the time of the appellants to settle and file their bill of exceptions herein be extended to and including October 25, 1940.

Dated, October 17, 1940.

JOHN T. CAHILL B. S. (sgd),
United States Attorney.

3243

HAROLD H. CORBIN (sgd),
Attorney for Martin M. Goldman.

MARTIN CONBOY (sgd),
Attorney for Theodore Goldman.

W. C. FIELDING (sgd),
Attorney for Jacob P. Schulman.

SO ORDERED.

HARRIE B. CHASE,
U. S. C. J.

Stipulation as to Exhibits.

UNITED STATES CIRCUIT COURT OF APPEALS,

3244 FOR THE SECOND CIRCUIT.

THE UNITED STATES OF AMERICA,

Appellee,

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN,

Appellants.

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the United States Attorney for the Southern Dis-
3245 trict of New York and the attorneys for the appellants that the printing of the following exhibits used upon the trial of the above entitled cause be, and the same hereby is waived, and the said exhibits may be presented by either side on the argument of the appeal herein with like force and effect as though physically reproduced in the Record herein:

Gov. Ex. A for Ident.—Engine Room Log Book of 277 Broadway.

Gov. Ex. B for Ident.—Frost's affidavits of April 4, 1940 and May 10, 1940.

3246 Pet. Ex. 2 for Ident.—Typewritten notes of Harold O. Schroeder on white paper used to refresh his recollection.

Pet. Ex. 3 for Ident.—Pencil notes on yellow paper used by Schroeder to refresh his recollection.

Pet. Ex. 4 for Ident.—Turner's pencil notes.

Pet. Ex. 5 for Ident.—Notes of Harold P. Turner, typewritten.

Gov. Ex. 2—Entire file of Assign. Proceedings of Paul Hymowitz to Samuel S. Kolman except Notice of retainer of Hoffman by Kolman, petition and order for provisional bond, petition and order to show cause (pp. 251-253 of Min.).

Stipulation as to Exhibits.

Gov. Ex. 3—File in Hymowitz Bankr. Proceedings, except Involuntary petition, petition and order staying sale, note of issue, affidavit of Hoffman and notice of motion to dismiss, and order dismissing. 3247

Gov. Ex. 16 for Ident.—Unsigned affidavits prepared by Hoffman April 3, 1937.

Gov. Ex. 17 for Ident.—Unsigned affidavits of Kolman, Hoffman and Wishbow prepared by Hoffman April 3, 1937.

Gov. Ex. 18, 19, 20 and 21—Bodinger's notes of April 26, 21, 14 and 7, 1937.

Gov. Ex. 18a, 19a, 20a and 21a—Transcripts of Bodinger, April 26, 21, 14 and 7, 1937.

Gov. Ex. 23 for Ident.—Order to show cause in bankruptcy of First 88 Cents Stores, Inc. 3248

Gov. Ex. 24 for Ident.—Page 80 of Grand Jury Minutes, Testimony of Theodore Goldman.

Gov. Ex. 25 for Ident.—Entire transcript of testimony of Theodore Goldman before Grand Jury.

Gov. Ex. 26 for Ident.—3 newspaper notices produced from Kandell's file (pg. 922, Steno. Min.).

Provided however that this stipulation shall not confer upon appellants the right to inspect any exhibits which the appellants had no right to inspect in the absence of this stipulation. 3249

Dated, New York, October 17, 1940.

JOHN T. CAHILL,
U. S. Attorney for Southern District of New York.

HAROLD H. CORBIN,
Attorney for Appellant Martin M. Goldman.

MARTIN CONBOY,
Attorney for Appellant Theodore Goldman.

PHILLIPS, MAHONEY & FIELDING,
Attorneys for Appellant Jacob P. Schulman.

So Ordered this day of October, 1940.

Stipulation as to Bill of Exceptions.

250 UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

Plaintiff.

—against—

MARTIN M. GOLDMAN, et al.,

Defendants.

251 IT IS HEREBY STIPULATED by and between the parties hereto that the foregoing bill of exceptions is correct, in every particular, that together with the exhibits to be submitted to the Circuit Court of Appeals upon the argument of the appeals herein, it contains all the evidence in the cause and that it may be duly signed, settled and allowed as the bill of exceptions of the defendants by any judge of this Court.

Dated, October 18, 1940.

JOHN T. CAHILL,
252 United States Attorney for the
Southern District of New York.

HAROLD H. CORBIN,
Attorney for Appellant Martin M. Goldman.

MARTIN CONBOY,
Attorney for Appellant Theodore Goldman.

PHILLIPS, MAHONEY & FIELDING,
Attorneys for Appellant Jacob P. Schulman.

Order Settling Bill of Exceptions.

3253

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

Plaintiff,

—against—

MARTIN M. GOLDMAN, et al.,

Defendants.

3254

This is to certify that the foregoing bill of exceptions, tendered by the defendants herein, is correct in every particular; that together with the exhibits to be submitted to the Circuit Court of Appeals upon the argument of the appeal herein, it contains all the evidence in this cause, and that said exhibits not printed herein are hereby made part of this bill of exceptions, which is hereby signed, settled, allowed and made a part of the record in this cause as the bill of exceptions of the defendants.

Dated, October 18, 1940.

3255

U. S. D. J.

Stipulation as to Contents of Record.

3256

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

Plaintiff,

—against—

MARTIN M. GOLDMAN, et al.,

Defendants.

3257

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a direct transcript of the record of the United States District Court for the Southern District of New York, in the above entitled matter, as agreed upon by the parties hereto.

Dated, October 18, 1940.

JOHN T. CAHILL,
United States Attorney for the
Southern District of New York.

3258

HAROLD H. CORBIN,
Attorney for Appellant Martin M. Goldman.

MARTIN CONBOY,
Attorney for Appellant Theodore Goldman.

PHILLIPS, MAHONEY & FIELDING,
Attorneys for Appellant Jacob P. Schulman.

Clerk's Certificate.

3259

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

Plaintiff.

—against—

MARTIN M. GOLDMAN, et al.,

Defendants.

3260

I, GEORGE J. H. FOLLMER, Clerk of the District Court of the United States, for the Southern District of New York, DO HEREBY CERTIFY that the foregoing is a true transcript of the record of the said District Court in the above entitled action, as agreed upon by stipulation between the attorneys for the parties.

IN TESTIMONY WHEREOF, I have caused the seal of the said court to be hereunto affixed at the City of New York, in the Southern District of New York, this day of October, in the year of our Lord one thousand nine hundred and forty and of the Independence of the United States, one hundred and sixty-four.

3261

GEORGE J. H. FOLLMER,
Clerk.

(Seal)

[fol. 1088] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA

vs.

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and Samuel Irving Kandell

It is Hereby Stipulated and Consented that Martin Conboy, Esq., of No. 39 Broadway, in the Borough of Manhattan, City of New York, be substituted as attorney for the defendant-appellant Theodore Goldman in the place and stead of Harold H. Corbin, Esq.

Dated October 14, 1940.

Theodore Goldman, Defendant-Appellant. Harold H. Corbin, Attorney for Theodore Goldman, Defendant-Appellant.

STATE OF NEW YORK,
County of New York, ss:

On this 14th day of October, 1940, before me personally came Theodore Goldman to me known and known to me to be the person described in and who executed the above consent and he duly acknowledged to me that he executed the same.

Mae J. Cannon, Notary Public, Kings County. Kings Co. Clerk's No. 53, Register's No. 2070 New York Co., Clerk's No. 28, Reg. No. 18901892. Commission expires March 30, 1942.

So Ordered.

D. E. Roberts, Clerk. (Seal.)

October 14, 1940.

[fol. 1089] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1940

No. 177

Argued January 13, 1941. Decided March 10, 1941

UNITED STATES OF AMERICA, Appellee,

against

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN, Defendants-Appellants,

and

SAMUEL IRVING KANDELL, Defendant

Appeal from a Judgment of the District Court for the Southern District of New York. Affirmed

Before Swan, Chase and Clark, Circuit Judges

[fol. 1090] John T. Cahill, U. S. Attorney, for Appellee; Bruno Schachner and John C. Walsh, Asst. U. S. Attorneys, of Counsel.

Harold H. Corbin, Attorney for Martin M. Goldman; Edward J. Bennett, and Francis B. Delehanty, Jr., of Counsel.

Martin Conboy, Attorney for Theodore Goldman; Martin Conboy, and David Ash, of Counsel.

Phillips, Mahoney & Fielding, Attorneys for Defendant Schulman; Warren C. Fielding, of Counsel.

CHASE, Circuit Judge:

The appellants were indicted in the Southern District of New York, for conspiring, contrary to the provisions of 18 U. S. C. A. Sec. 88, to commit an offense against the United States by receiving or attempting to obtain money for acting or forbearing to act in a bankruptcy proceeding in violation of 11 U. S. C. A. Sec. 52(b). After trial by jury in that court, they were all convicted and sentenced. This appeal followed.

The appellants seek reversal of the judgment on the ground that error was committed in denying their motion to dismiss and later to set aside the verdict for insufficiency of the evidence; and also rely upon errors in the denial of

a motion to suppress evidence; in the introduction of evidence; and the denial of a motion to inspect memoranda made by witnesses for the government.

The evidence was clearly sufficient to make a prima facie case as follows:

One Hymowitz, who was the proprietor of a small dry-goods store on the Bowery in New York City, was convicted [fol. 1091] of some offense relating to the use or possession of relief tickets issued by the City of New York and was imprisoned. His mother and sister engaged Robert Hoffman, an attorney and distant relative, to undertake to settle his business affairs with his creditors. They both had claims against Hymowitz for loans made him but were willing to waive them to further an effort to settle in a way sufficiently satisfactory to the merchandise creditors to enable Hymowitz to go back into business when he had served his sentence.

Hoffman saw Hymowitz in prison and obtained his signature to a general assignment for the benefit of creditors, dated March 22, 1937, under which one Kolman, a lawyer associated with Hoffman, was the assignee. Hoffman then was retained by the assignee and the assignment proceedings were begun in the state court. A letter was sent to all creditors explaining the financial situation of Hymowitz. It was estimated, as thereir stated, from information obtained from him and from a appraisal that the cost of his stock in trade was from $2 '00.00 to $2500.00; that there were Emergency Relief Bur u Vouchers on which about $250 could be realized and that "the City is also indebted to Paul Hymowitz in the further sum of approximately Two hundred dollars in connection with other relief vouchers." The liabilities were given as about $2500.00 and the cooperation of creditors was asked in aid of a stated "purpose to see that a thorough and proper administration is had and that creditors shall realize as close to one hundred per cent of their claims as possible."

The assignee engaged an auctioneer and made arrangements to hold a public sale of the property at the store of the assignor on April 5, 1937, after due notice given.

That sale was never held, however, because the appellants acted in concert to prevent it in the following way: Martin M. Goldman, who was a partner in the law firm of Goldman, [fol. 1092] Malter and Goldman in New York City and in which his brother Theodore Goldman another appellant was

a partner, arranged with Hoffman in behalf of a creditor who was a client of his firm for a meeting of creditors on the afternoon of March 25, 1937 at the offices of the Dry Goods & Furnishings Association of which one Kandell, a defendant whose motion to dismiss was granted, was in charge.

At about one o'clock on that afternoon and before the meeting of creditors was to be held Theodore Goldman and Kandell called at the office of Hoffman where they met him and one Wishbow, the auctioneer who was to conduct the sale for the assignee, and proposed that blank forms they had brought along be executed to make Kandell a co-assignee and retain Goldman as co-attorney for the assignees. Hoffman was unwilling to consent though pressed to do so to avoid the possibility of the assignment proceedings being made abortive by the filing of an involuntary petition in bankruptcy and to make everything go smoother as creditors might feel that Hoffman and the assignee were too closely connected with the debtor to represent them adequately. Hoffman explained that it was a small matter which needed no additional attorney or assignee and persisted in his refusal.

The meeting of the creditors was held later that afternoon with some present; some represented by Kandell; and some by Martin M. Goldman. Hoffman explained the situation and asked the creditors to cooperate. Goldman advocated a private bulk sale of the goods and apparently all but Hoffman and Wishbow agreed. During the meeting Hoffman and Wishbow were asked to withdraw while further discussion was had and while they were in another room Martin M. Goldman joined them and told them that he would like to make some money out of it; that he could arrange to have [fol. 1093] a buyer, either he or Kandell would obtain, purchase the goods in bulk at private sale who would pay enough to allow for a 40% settlement with creditors and for some expenses and in addition some $400.00 to be kept secret and divided among Kandell, Goldman and Hoffman. Hoffman did not agree and when he suggested to Goldman that the creditors at the meeting would not accept a settlement at such a percentage Goldman said they would each get ten dollars to "shut their mouths."

This proposal to Hoffman, not being accepted, Martin M. Goldman, Theodore Goldman and Schulman decided that an involuntary petition in bankruptcy should be filed and

the proposed sale by the assignee stayed. Theodore Goldman then prepared an involuntary petition using a blank form and making only general allegations of acts of bankruptcy which left the petition demurrable and subject to dismissal, if no motion to amend was made, merely upon motion without notice to creditors other than those petitioning. Schulman was made the attorney of record for the petitioning creditors.

A stay of the assignee's sale was obtained ex parte and served upon Hoffman on the morning of April 5th, the day the sale was to be held. He moved to vacate the stay but his motion was denied after a hearing the same morning before the district judge who issued the stay order, Schulman having appeared with creditors in opposition. After the hearing Hoffman went to the office of a referee in bankruptcy and told the referee what he thought the defendants were trying to do. The referee called in a representative of the Federal Bureau of Investigation to whom Hoffman explained the situation and thereafter Hoffman acted under the instructions of the Bureau. He pretended to be willing to "do business" with Schulman and at a meeting on April 7, 1937 in Schulman's office at which Martin M. Goldman was present the matter was discussed. Mean-[fol. 1093] while the Federal Bureau of Investigation had been informed of the time and place of that meeting and had been permitted by the custodian of the building to enter Schulman's office without his knowledge and to install a dictaphone with an outlet in an adjoining vacant room. Representatives of the Bureau were in that adjoining room to record the conversation at the meeting of Schulman, Martin M. Goldman and Hoffman, but the dictaphone didn't work and they were able to get only such fragments of the talk as could be heard through a detectaphone they placed against the side of the wall separating the room they were in from Schulman's office and which was wholly inside the room they were in. This was an instrument in no way connected with the dictaphone above mentioned.

At this meeting Martin M. Goldman took Hoffman to task for his attitude at the hearing before the district judge on the motion to vacate the stay and denied that he had made any improper proposal regarding the disposition of the proceeds of a bulk sale which he insisted was best for creditors. Schulman, attempting to bring Goldman and Hoffman

to a better understanding, took the ground that Hoffman's inexperience in such matters accounted for his attitude and the situation was discussed at some length without a definite agreement. At this point Goldman left Schulman's office and Schulman followed him outside. After a little while Schulman came back and told Hoffman that Goldman was afraid to speak before him but that he would carry out whatever Schulman and Hoffman "agreed upon or arranged." Thereupon, Hoffman pretended to asquiesce reluctantly to Schulman's plan to sell the goods in bulk to a buyer who would pay enough to settle with creditors on a 40% basis; leave a small amount for expenses and provide about $400.00 to be kept secret and divided among Schulman, the Goldmans and Hoffman after some disclosed expenses had been paid. After Hoffman left, Schulman was [fol. 1095] heard by the government agents in a conversation with someone over the telephone to say in part, "I'm in a positi n now, I control * * *. Between you and me, he wanted to give creditors 80 cents on the dollar, so there was no room for the boys. So we dumped in on it. Do you understand? The reason I tell you is this. He had two or three men of his own, his auctioneer, that wanted to give him eighteen hundred to two thousand, you understand? Now Goldy even said it would bring sixteen hundred. Goldman is smart. He says he'd bring twelve hundred and sixteen hundred understand? So figuring when he told me somebody had raised it to two thousand and wanted to give it to him at the figure, I figured Goldman would get thirty-three hundred for it, but as it is now take another look and tell me. You don't have to. If we can get a few dollars for ourselves—the result is three * * *."

Schulman and Hoffman conferred several times afterwards and came to an apparent understanding about the bulk sale, and reached the point where Hoffman on April 26th delivered to Schulman a bill of sale of the goods from Hymowitz to one L. Wein in which the consideration was stated to be $1200.00 and no mention was made of the relief tickets.

Meanwhile Theodore Goldman prepared a motion to dismiss the petition in bankruptcy which he had drawn and Schulman had filed as attorney for the petitioning creditors and sent it to Hoffman. Hoffman signed it as attorney for the bankrupt and the petition was dismissed on that motion on May 14, 1937 without opposition.

On May 19, 1937, Theodore Goldman sent Hoffman a copy of the order of dismissal of the bankruptcy petition, and three papers which he asked Hoffman to have Hymowitz sign and then return. One was a bill of sale of the goods from Hymowitz to A. Rothhein for the stated price of $1500.00. Another was a letter from Hymowitz to Goldman, [fol. 1096] Malter & Goldman authorizing them to make the sale when the general assignment proceedings were dismissed and to use the proceeds "together with the monies due me from the City of New York" to pay all creditors 40% of their claims except the City Sales Tax Bureau which was to be paid in full and then to "pay all administration expenses, legal fees and disbursements in connection with the bankruptcy proceedings and the assignment for the benefit of creditors." The letter renounced all claim of Hymowitz to any "portion of this money" and authorized Kohman "to turn over to you any monies in his possession as assignee to be used for the purposes hereinabove mentioned." And the third was an assignment from Hymowitz to Goldman, Malter and Goldman of all sums due or to become due the former "in connection with Emergency Relief Bureau Vouchers, issued by the City of New York, and or the Emergency Relief Bureau, which vouchers were heretofore turned over to Paul Hymowitz."

Steps were also taken to get the consent of creditors to the proposed settlement but the whole plan was frustrated by the refusal of a creditor to give a release in full for the percentage offered. This creditor took legal action which did away with the proposed bulk sale and resulted in a sale of the goods at auction by an auctioneer named by that creditor. The proceeds of that sale were all properly applied but the result was a much smaller percentage paid on claims than had previously been contemplated.

On such evidence it was clearly for the jury to decide whether the appellants had acted in good faith as they claimed solely for the best interests of the creditors or whether they had fraudulently planned to compel Hoffman under threat of the bankruptcy proceedings to let them control the situation; create a secret fund and divide that in violation of the statute as the government's evidence and especially that of Hoffman, would prove if believed and we [fol. 1097] must now take it for granted that it was believed by the jury. There was, accordingly, ample proof of the conspiracy and the evidence connecting the appellants in the

scheme was plainly adequate. Tomplain v. United States, 42 F. (2d) 202. What Schulman said and did in furtherance of the conspiracy was competent evidence not only against himself but against the others and admissible as to them in the exercise of a sound discretion by the trial court. Wiborg v. United States, 163 U. S. 532; Delaney v. United States, 263 U. S. 586; Cluine v. United States, 159 U. S. 590.

Nor was any error committed in denying Schulman's motion, in which the Goldmans did not join, to suppress the evidence obtained by government agents by the use of the detectaphone and allowing it to be introduced at the trial. Nothing was obtained as a result of any secret entry of Schulman's office. No trespass upon his premises in any way helped to obtain the evidence. The situation was legally no different from the use of an amplifier of sound to overhear conversation not otherwise audible to the listener as, for instance, the use of a common aid to hearing by a person somewhat deaf. No communication by wire or radio was intercepted to make applicable the provisions of Sec. 605 of the Communications Act of 1934 (c. 652, 48 Stat. 1064, 1103; 47 U. S. C. A. Sec. 605) as construed in Nordone v. United States, 308 U. S. 338. There was only an instance of eavesdropping which alone, though an invasion of privacy, is not a violation of a recognized legal right to privacy. Conspirators who discuss their unlawful schemes must take the risk of being overheard and the risk of having what is overheard used against them provided there is otherwise no trespass by the listener or violation of a statutory right to use a means of communication thus made immune from interception. Olmstead v. United States, 277 U. S. 438. Compare, United States v. Feldman, 104 F. (2d) 255; and Smith v. United States, 2 F. (2d) 715. [Vol. 1098] Federal agents who testified had made minutes of occurrences concerning which they gave evidence and had read over their minutes in preparing to testify at the hearing on the motion to suppress evidence. None of them used such notes to refresh his memory when on the stand either at the preliminary hearing or at the trial. A motion by appellants for the delivery to them of such notes for inspection was denied both at the hearing on the motion and at the trial and exceptions were taken. Memoranda actually used by a witness when testifying may be examined by opposing counsel if a request so to do is made.

Morris v. United States, 149 F. 123, 126. Where an attorney has made use of grand jury minutes in the examination of a witness the court may, nevertheless, in the exercise of a sound discretion deny a request of opposing counsel to inspect them. U. S. v. Socony-Vacuum Oil Co., 310 U. S. 150, 233-234. Where the witness neither uses memoranda when testifying nor use of it is made by counsel in his examination there is ordinarily no danger, and there certainly was none here, that the witness when on the stand will either be imposed upon in that respect or receive any improper communication or that there are hidden circumstances which might detract from the weight of his testimony of which opposing counsel should be made aware and given the opportunity to expose. The reasons underlying the rule permitting inspection not being applicable, it was not error to deny the appellants' motion. Lennon v. United States, 20 F. (2d) 490; Mullaney v. United States, 82 F. (2d) 638; C. W. Hull Co. v. Marquette Cement Mfg. Co., 208 Fed. 260.

No other grounds for reversal have been advanced which are of sufficient merit to require discussion.

Judgment affirmed.

[fol. 1106] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 26th day of March one thousand nine hundred and forty-one.

Present: Hon. Thomas W. Swan, Hon. Harrie B. Chase, Hon. Charles E. Clark, Circuit Judges.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN, Defendants-Appellants, and Samuel Irving Kandall, Defendant

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

D. E. Roberts, Clerk.

[fol. 1107] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States of America v. Martin M. Goldman, Theodore Goldman and Jacob P. Schulman and Samuel Irving Kandell. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 26, 1941. D. E. Roberts, Clerk.

[fol. 1108] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1105] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee,

vs.

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN, Defendants-Appellants,

and

SAMUEL IRVING KANDELL, Defendant

Before Swan, Chase and Clark, Circuit Judges

PETITION FOR REHEARING

Theodore Goldman, Petitioner; Martin Conboy, of Counsel.

Per CURIAM:

Petition for rehearing denied.

T. W. S. H. B. C. C. E. C.

Apr. 18, 1941. C. J. J.

A true Copy.
D. E. Roberts, Clerk.

[fol. 1106] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States of America, Appellee, vs. Martin M. Goldman, Theodore Goldman and Jacob P. Schulman, Defendants-Appellants, and Samuel Irving Kandell, Defendant. Opinion. Petition for Rehearing. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 18, 1941. D. E. Roberts, Clerk.

[fol. 1107] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United

States Courthouse in the City of New York, on the 18th day of April, one thousand nine hundred and forty-one.

Present: Hon. Thomas W. Swan, Hon. Harrie B. Chase, Hon. Charles E. Clark, Circuit Judges

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN, Defendants-Appellants,

and

SAMUEL IRVING KANDELL, Defendant

A petition for a rehearing having been filed herein by counsel for the appellant, Theodore Goldman,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

D. E. Roberts, Clerk.

A true copy.

D. E. Roberts, Clerk. (Seal.)

[fol. 1108] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States of America v. Martin M. Goldman, Theodore Goldman and Jacob P. Schulman. Order. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 18, 1941. D. E. Roberts, Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 962

ORDER GRANTING REHEARING AND CERTIORARI—October 20, 1941

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit

A petition for rehearing having been submitted in this case;

Upon consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted.

And it is further ordered that the order denying certiorari, be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration and decision of this application.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 963

ORDER GRANTING REHEARING AND CERTIORARI—October 20, 1941

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit

A petition for rehearing having been submitted in this case;

Upon consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted.

And it is further ordered that the order denying certiorari, be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration and decision of this application.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 980

ORDER GRANTING REHEARING AND CERTIORARI—October 20, 1941

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit

A petition for rehearing having been submitted in this case;

Upon consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted.

And it is further ordered that the order denying certiorari, be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration and decision of this application.

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CHARLES ELMORE CROP

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

Nos. 962, 963, 980

MARTIN M. GOLDMAN, JACOB P. SHULMAN and THEODORE GOLDMAN,

Petitioners,

against

UNITED STATES OF AMERICA.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

JEREMIAH T. MAHONEY,
Attorney for Petitioner Jacob P. Shulman.

JACOB W. FRIEDMAN,
Attorney for Petitioners Theodore Goldman and Martin M. Goldman.

OSMOND K. FRAENKEL,
of Counsel.

MARK SERVICE, BARCLAY 7-2180

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

MARTIN M. GOLDMAN, JACOB P. SHULMAN and THEODORE GOLDMAN, Petitioners, against UNITED STATES OF AMERICA.	Nos. 962, 963, 980.

PETITION FOR REHEARING.

TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioners respectfully pray this Court to reconsider its determination made on June 2, 1941, which denied their several petitions for writs of certiorari to the United States Circuit Court of Appeals for the Second Circuit to review judgments of conviction of the crime of conspiracy in connection with a bankruptcy proceeding. Petitioners were tried jointly.

Your petitioners respectfully submit that there is presented in these cases a serious question of constitutional law which should be passed upon by this Court, a question which is bound to have increasing importance in the future, not only with regard to the particular situation here presented, but other situations of like kind.

This question is, whether or not the use by Government agents of a mechanical device for the purpose of overhearing conversations conducted in the privacy of the office of one of the defendants and the introduction in

evidence of the conversations so overheard is an infringement of the right of privacy guaranteed by the Fourth Amendment. In the particular case the mechanical device was a detectaphone, a microphone placed on the *exterior* wall of the office in question. It is the contention of petitioners that the use of this device was facilitated by an unauthorized entry into the office in question. And although, on this phase of the case the facts were otherwise found below, petitioners respectfully submit that it is for this Court ultimately to determine the facts where grave constitutional issues are involved. This is all the more essential because there can be no doubt that if the evidence was obtained as the result of an unlawful entry into the office, thus an unreasonable search of the office, it should have been suppressed as a violation of the Constitution—and the Trial Court was of that opinion (R. 493, 494). The Trial Court's ruling that the agents "could have just as easily" (R. 495) used the detectaphone without a previous unlawful entry into the office cannot overcome the fact that there was such previous unlawful entry and that the agents were, by that entry, enabled to ascertain the layout of the office and particularly the location of the desk, facts which concededly facilitated the placing of the detectaphone. The agent, Schroeder, testified that Turner, who had participated in the unlawful entry, described the layout of the office and that this helped in selecting a location for the detectaphone (R. 103).

But whether the conceded invasion of defendants' constitutional rights facilitated the later use of the detectaphone or not, it is respectfully submitted that no invasion of privacy, such as here took place, can be reconciled with the protection which the Fourth Amendment was intended to assure to the privacy of citizens. We cannot doubt that if, in the case at bar, a dictograph had been installed in the defendants' office and the conversation was thus overheard, the evidence would have been suppressed. We can-

not believe that the Fourth Amendment offers protection only when there has been an unlawful entry on the *inside* of a home or office. We believe that under the decisions of this Court, which will be discussed more fully in the accompanying brief, the Fourth Amendment was intended to protect the privacy of the home or office against any infringement by public authority.

We do not, of course, go so far as to suggest that a police officer may not use his powers of observation to ascertain what is going on inside of a home or office—as by overhearing loud conversation or observing the conduct of persons through an unshaded window,—nor even that such officer might not use ordinary scientific aids, such, for instance, as a field glass. For the Fourth Amendment was intended to protect those who were intent on protecting themselves, it was not intended to act as a shield for the careless. On the other hand, it was intended to assure privacy to those who believed they had acquired such privacy; it was intended to make a man's home his castle when he himself took the ordinary precautions to make it so.

Therefore, we submit, any interference with the walls of that castle constitutes as much an invasion of the privacy of the home as would a direct entry. It should make no difference that the sense of hearing was used by the government, rather than the sense of sight. Nor can it make any difference that the interference with the walls left no mark upon the walls and consisted only of the placing of a mechanical device which transmitted the vibration of the walls. Surely, if a machine should be invented which could photograph through walls it could not be urged that there was no invasion of the home and thus no infringement of the Fourth Amendment because the machine was operated against the interior of the home entirely from the outside. And whatever is true about the home is equally true about a private office.

As we shall show in the accompanying brief, there has recently been a great deal of public interest in the somewhat related subject of wiretapping. The Department of Justice sought to obtain from the Congress legislation authorizing the use of wiretapping, legislation which the Congress declined to give. This proposed legislation brought forth protest from liberal groups and organized labor throughout the country, protests both on the ground of policy and on the ground of constitutional law. From the nature of these protests we confidently assert that had the Department of Justice sought to obtain from the Congress the right to use a device such as a detectaphone, like protest would have been forthcoming. In both cases the danger to the liberty of the individual is substantially the same. In both cases the door is open wide for possible improper use by government agents of the overhearing of confidential communications wholly unrelated to the violation of any criminal law—it must not be forgotten that in the case at bar the office which the agents thus "wall tapped" was a lawyer's office. The opportunities for blackmail and extortion are thus manifest. Indeed, there are considerations which make the tapping of walls even more offensive than the tapping of wires since a person who uses the telephone knows that there is some risk of his conversation being overheard, either by the operator or through some mechanical device resulting in the crossing of wires. A person in the privacy of his home or in a lawyer's office has every reason to suppose that his conversations are not being overheard.

The right of security against the invasion of privacy is perhaps broader in its scope and more universal in its incidence than any other right guaranteed by the Constitution. Moreover, the most far-reaching aspect of the right is involved in the consideration of the millions of private conversations and discussions that are daily episodes in the lives of Americans. A busy lifetime may pass

without experiencing a trial by jury; to the vast majority of our citizenry the writ of habeas corpus is but a matter of academic interest; many never avail themselves of the prerogative of petitioning the government for redress of grievances; but who among us does not constantly have occasion to speak to others in the rightful belief that the conversation is protected from simultaneous divulgence beyond the walls of the home or office where it is taking place? A physical raid—reprehensible though it may be—has the dubious virtue of being readily apprehended by the victim. It is otherwise with the insidious detectaphone. Affixed to the wall of the "castle" that has heretofore enjoyed such beneficent status in Anglo-American law, it contrives to extract the conversation whose unwitting participants deem themselves to be alone, to the end that the "private" conversation may later be used as an instrument of oppression. The Fourth Amendment would indeed be a rigid and inflexible enactment if its tenor were circumscribed by the narrow and literal abuses contemporary to its adoption. It would be virtually impossible to conceive of an individual whose lawful activities and daily pursuits did not properly necessitate the safeguard of privacy. The right becomes far more meaningful, and inroads upon it conversely less profitable, if this Court authoritatively forbids the reception into evidence of testimony predicated upon so egregious a violation.

We also believe that the Courts below erred in ruling that the divulgence of the telephone conversations overheard through the detectaphone was not a violation of the Federal Communications Act and in refusing to permit counsel for petitioners the right to inspect memoranda utilized by government witnesses to refresh their recollections, on both of which points we again respectfully refer this Court to the discussion in the original applications for certiorari.

We, therefore, respectfully submit that a rehearing should be granted in these cases and the determination of this Court denying the writs of certiorari set aside and writs of certiorari to review the judgments of conviction granted.

August 22, 1941.

JEREMIAH T. MAHONEY,
Counsel for Petitioner
Jacob P. Shulman.

JACOB W. FRIEDMAN,
Counsel for Petitioners
Martin M. Goldman and
Theodore Goldman.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

MARTIN M. GOLDMAN, JACOB P. SHULMAN and THEODORE GOLDMAN, Petitioners, against UNITED STATES OF AMERICA.	Nos. 962, 963, 980.

BRIEF ON APPLICATION FOR REHEARING.

The facts, in so far as they relate to the issues presented to this Court, are not in dispute. Testimony was introduced at the trial of conversations overheard by government agents. The conversations took place in the office of petitioner Shulman, an attorney. They were overheard through the use of a mechanical device placed on the exterior wall of that office. Before that device was used, the agents had made an illegal entry into the office for the purpose of installing a different device, later abandoned. One of the agents himself testified that the placing of the device actually used was facilitated by information obtained as the result of the unlawful entry.

As soon as the petitioner, Shulman, learned of the unlawful entry into the premises he objected to the admission of the testimony and each of the other petitioners was allowed by the Trial Court to participate in this objection (R. 84, 168). Exceptions were also noted by all petitioners to the rulings of the Trial Court permitting the use of the testimony (R. 168, 382).

The objection was, of course, based upon the Fourth Amendment. It is petitioners' contention that this Amend-

ment was intended to secure a broad right of privacy in the home and office which may not be infringed by government agents in the manner above related. The Court below (118 F. 2nd 310) took the view that there was involved here merely a form of eavesdropping, saying that persons "must take the risk of being overheard" provided there is neither trespass nor violation of a statutory prohibition.

We respectfully submit that the Court below erred both in concluding that the conceded trespass had no relation to the later overhearing and in ruling that this constituted nothing more than ordinary eavesdropping. Both of these questions are novel and of such importance as to justify review by this Court.

POINT I.

An unconstitutional trespass made possible the overhearing of the conversations admitted in evidence.

As conceded by the government in its brief in opposition to the granting of the certiorari, two agents of the Federal Bureau of Investigation obtained entrance to Shulman's office without his knowledge on the night of April 6, 1937, for the purpose of inserting a microphone. The following afternoon the agents went to the office adjoining Shulman's and there installed the detectaphone which was later used for the purpose of overhearing the conversations. There is no dispute that Turner, one of the agents who had been in Shulman's office, described its arrangement to Schroeder, one of the other agents (R. 103, 112-113). Moreover, Schroeder testified that this helped him in selecting a location for the detectaphone:

> "Q. Mr. Turner had a pretty good layout in his mind's eye on the Shulman office layout, didn't he? A. Yes, sir.

Q. Didn't that help you somewhat in picking out a good spot to listen to the conversation? A. It did" (R. 103, cf R. 113-115).

That Schroeder also testified that the location of the detectaphone was determined by trial and error (R. 101, 116, 117) cannot take away from the force of the quoted statement. The knowledge of the layout of Shulman's office was bound to be of help in determining the area within which the trial uses would be made, in saving time in the trial and error placement of the detectaphone. Without that so much time might have been lost in the process of trial and error that the result might have been negligible. Certainly, in view of Schroeder's admission that he was helped by the knowledge of the layout of Shulman's office obtained by Turner, it cannot be said that the trespass did not help in obtaining the ultimate evidence.

This Court has laid down the salutary rule that when there has been an entry into premises in violation of the Fourth Amendment, any evidence obtained as the result of such violation must be banned. This principle was first clearly stated in *Silverthorne Lumber Company* v. *United States*, 251 U. S. 385, where the Court said:

"The knowledge gained by the Government's own wrong cannot be used in the way proposed."

The principle was recognized by the Court of Appeals for the District of Columbia in *Nueslein* v. *District of Columbia*, 115 F. 2nd 690, where the Court held inadmissible a statement by the defendant at the time officers illegally entered his premises. Judge Vinson fully reviewed the decisions of this Court and other Federal courts and reached the conclusion that the only effective way of realizing the security guaranteed by the Fourth Amendment was "to dissolve the evidence that the officers

obtained after entering and remaining illegally in the defendant's home." And the Circuit Court of Appeals for the Second Circuit, in *United States* v. *Goldstein*, 120 F. 2nd 485, recognized the force of this rule in considering whether or not witnesses might be allowed to testify who had been induced to become informers because of wiretapping conducted by the government. It was only because the persons there complaining had no standing to object to the wiretapping that the Court in that case upheld the convictions.

Without regard, therefore, to the broader question whether the use of a detectaphone in and of itself would violate the Fourth Amendment, it is submitted that in this case the uncontradicted evidence shows a mingling of knowledge obtained as the result of an unlawful search of the premises with that obtained through the detectaphone itself. And the fact that the entry was made for the purpose of placing something in the office rather than taking something away cannot make the search any the less a violation of the Fourth Amendment. Accordingly, under all the authorities (see also *Nardone* v. *United States*, 308 U. S. 338) the conversations overheard through the detectaphone are tainted with the unlawful entry into the office and should have been excluded.

POINT II.

The use of the detectaphone was a violation of the Fourth Amendment.

This Court has, with rare exceptions, given to the Fourth Amendment a broad and liberal construction so as to preserve the basic purpose for which it was placed in the Constitution. That the Fourth Amendment was created to embody an ancient principle of English liberty that "every man's home is his castle" has been recognized by various writers on constitutional law.* It was enacted against a historical background of the use of general warrants in proceedings for seditious libel resulting in the judgment of *Entick* v. *Carrington*, 19 How. St. Tr. 1029, where Lord Camden declared the objectionable practices illegal, ruling, among other things (p. 1073) that a search for evidence as such was illegal. And this Court in *Gouled* v. *United States*, 255 U. S. 298, carried over into American constitutional law this decision of Lord Camden by ruling that not even a search warrant could be obtained for the purpose of securing to the Government material which was evidentiary in character only.

While the emphasis of many of the decisions is upon the search for and seizure of tangible objects, it must not be forgotten that the Fourth Amendment condemns not merely the seizure but the search as well, and search there may be for purposes other than the seizure of tangible objects.

It will be readily conceded that the Amendment was designed to protect the citizen against the "prying eyes" of the government. (Cooley, op. cit. 425). Can it be said

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* Cooley, Constitutional Limitations, 7th Ed. p. 425;
McLane, Constitutional Law, p. 313;
Von Holtz, Constitutional Law, p. 257.

that the government may use its ears without let or hindrance?

The Trial Court in this very case expressed the opinion that had the conversations been overheard as the result of the microphone originally placed in the office of Shulman, the testimony would have been inadmissible. Nevertheless, there would have been no search or seizure in the conventional sense. In the mind of the Trial Court the distinction appears to have been between a mechanical device which was placed inside of the office and one merely applied to its exterior walls. We submit that no such narrow distinction can constitutionally be made. Surely, the outside wall is as much a part of the office or home as is the inside wall. If this had not been an office among many offices in a large building but a shack isolated in the woods, could it be said that the installation of a scientific instrument on the *outside* wall of such a shack would not be a violation of the constitutional guaranty, whereas there would be such violation had the mechanism been placed within the four walls? In both cases the government has actually trespassed upon the premises by an invasion thereof not consented to by the owner or occupant.

What the government has done here is to "tap" the walls of an office—that it should be an office rather than a home is, of course, inconsequential (see *Silverthorne* v. *United States*, *supra*). But for the decision in the *Olmstead* case, 277 U. S. 438, it could hardly be doubted that any tapping, whether of walls or of wires, would be an invasion of the constitutional guaranty. Nevertheless, within the precise reasoning and meaning of that decision, it is submitted that these petitioners have been materially aggrieved and are entitled to a reversal. The language there employed by the Court establishes that the tapping of the walls of a home or office presents a clear case for the application of the constitutional guar-

anty—and that that situation is distinguishable in principle from the tapping of telephone wires. For, as Chief Justice Taft declared for the Court in the *Olmstead* case:

> "The reasonable view is that one who installs in his house a telephone instrument with connecting wires, intends to project his voice to those quite outside, and that the wires beyond his house and messages while passing over them are not within the protection of the Fourth Amendment" (p. 466).

The Court thus took the position that where a person used a telephone wire which he knew extended beyond the privacy of his home, he ran the risk that some one might overhear the conversation on that wire. The intention in such case is to project the voice beyond the protection of the speaker's private premises.

Not so is the case of persons conferring confidentially in a lawyer's office (apart from any question of privilege). They have no intention of projecting their voices. True, if they speak too loudly they know they may be overheard; so, if they leave doors or windows open, they run a like risk. Where, however, as here, all ordinary precautions are taken to preserve inviolate the confidential character of the discussion occurring within the office, it would be a destruction of all right of privacy to permit what was so confidentially discussed* to be used by government agents who were enabled to overhear the discussion through the use of extraordinary mechanical means, particularly where those means were directly applied to the walls of the premises themselves.

We respectfully call this Court's attention to the hearings recently held before a subcommittee of the Judiciary

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*F. B. I. Agent Ransom testified that the detectaphone could be employed to overhear conversations through a stone wall, saying (R. 95):

"Q. Can you take that through a stone wall?
A. It is possible, yes."

Committee of the House of Representatives in connection with certain bills there pending dealing with wiretapping.* Congress had been asked by the Department of Justice to authorize the use by government agents of wiretapping under certain conditions, an authorization subsequently refused. In opposition to the proposal appeared representatives of all of the labor organizations, including the railroad brotherhoods and of every shade of liberal opinion.

It is fundamental that no emergency can ever justify any relaxation of constitutional rights. Whatever argument may be adduced for the need to preserve the government, and indeed the nation itself, is equally valid for the need to uphold the rights which are of the very essence of our democratic principles. If we must safeguard the republic, we must likewise safeguard the Constitution which is its foundation. The lapse of seventy-five years has not dulled this Court's ringing words in *Ex parte Milligan*, 4 Wall. (71 U. S.) 2:

> "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government" (p. 120).

For these various reasons it is respectfully submitted that the Court reconsider its previous decision and grant certiorari so that it may fully consider the important question here presented.

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*Hearings before Subcommittee No. 1 of the Committee on the Judiciary, House of Representatives, 77th Congress, 1st Session on H. R. 2266 and H. R. 3099 (1941).

Conclusion.

Petitioners respectfully urge this Court to rescind the determination made on June 2, 1941, denying their petitions for writs of certiorari and that it grant such writs to the United States Circuit Court of Appeals for the Second Circuit to review the convictions herein.

Respectfully submitted,

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OSMOND K. FRAENKEL,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

Nos. 962, 963, 980.
(October Term, 1940.)

MARTIN M. GOLDMAN, JACOB P. SHULMAN and THEODORE GOLDMAN,

Petitioners,

against

UNITED STATES OF AMERICA.

BRIEF FOR PETITIONERS.

JEREMIAH T. MAHONEY,
Attorney for Petitioner,
Jacob P. Shulman.

JACOB W. FRIEDMAN,
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Martin M. Goldman.

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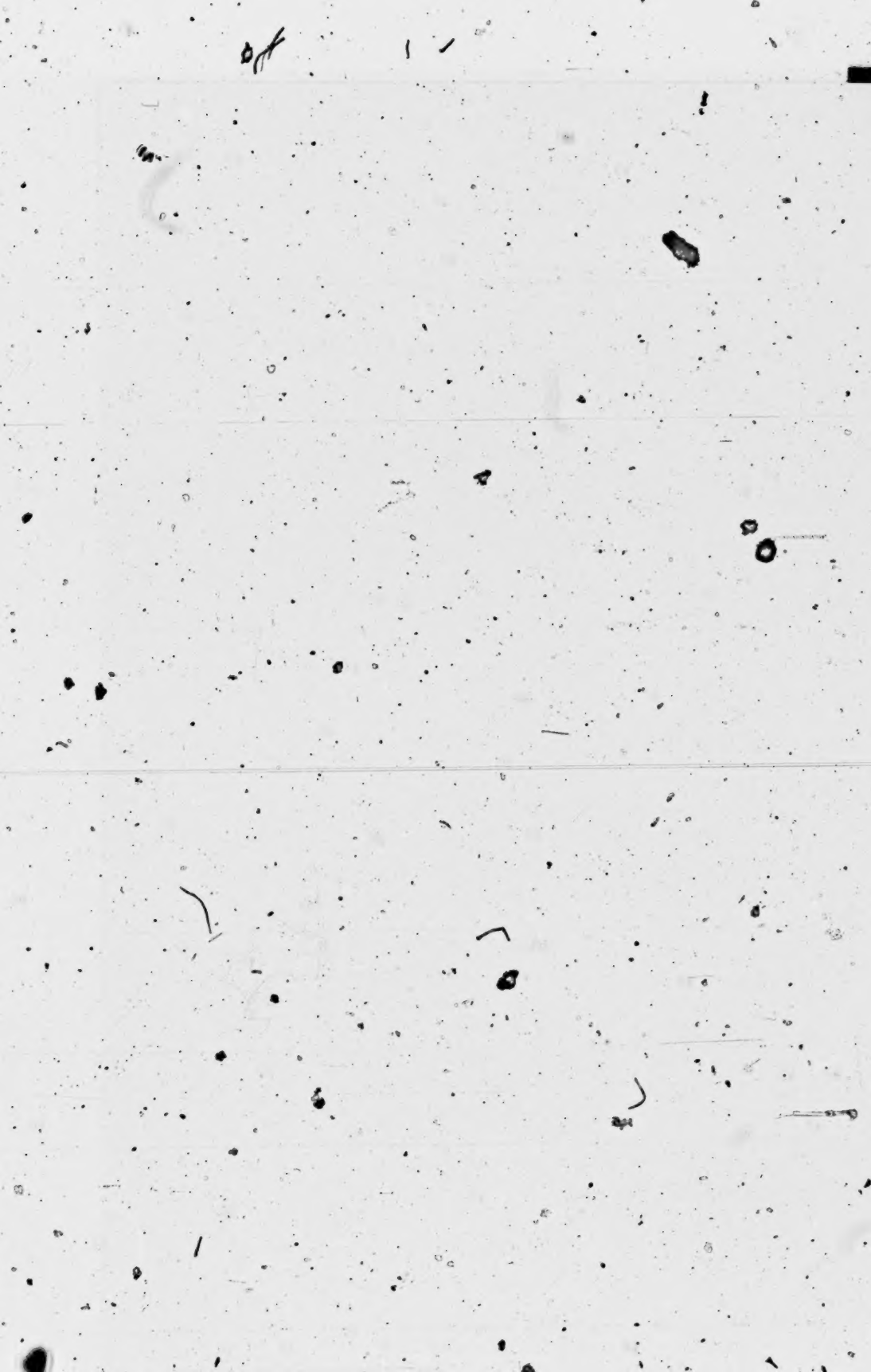

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

MARTIN M. GOLDMAN, JACOB P. SHULMAN and THEODORE GOLDMAN, Petitioners, against UNITED STATES OF AMERICA.	Nos. 962, 963, 980. (October Term, 1940.)

BRIEF FOR PETITIONERS.

Opinions Below.

The opinion of the Circuit Court of Appeals for the Second Circuit is reported at 118 F. 2nd 310. No opinion was rendered in the District Court other than the oral ruling on the preliminary motion to suppress evidence which is found in the record at pages 164-167.

Jurisdiction.

The jurisdiction of this Court is invoked under §240(a) of the United States Judicial Code, 28 U. S. C. 347. The judgment of the Circuit Court of Appeals was entered on March 26, 1941, and petitions for writs of certiorari were filed on behalf of Martin M. Goldman and Jacob P. Shulman on April 18, 1941, and on behalf of Theodore Goldman on April 23, 1941.

Statement of the Case.

The indictment in the case at bar (3) charged a conspiracy between petitioners, who are all lawyers (and one Kandell, as to whom the case was dismissed during the trial), in fraudulently causing a bankruptcy petition to be filed and then withdrawn in an endeavor to obtain the sum of $400.00. The facts, as developed at the trial, are as follows:

Paul Hymowitz, an army and navy goods store retailer, was in difficulties. Robert Hoffman, an attorney, who was related to him, advised him to execute an assignment for the benefit of creditors to Hoffman's office employee, one Samuel Kolman, who retained Hoffman as attorney (176-178). At a meeting of the creditors, called at their request, and held at the Dry Goods and Furnishings Association on March 25th, 1937, Samuel Kandell, an officer of the association, presided (190). Among those present, in addition to several creditors, were Hoffman, Gabriel Wishbow (an auctioneer retained by the assignee) and petitioner Martin M. Goldman, whose firm represented a creditor (191). Kandell was named as a defendant in the indictment, but it was dismissed as to him at the close of the Government's case (531). Neither petitioner Theodore Goldman nor petitioner Jacob Shulman was present at this meeting. At the instance of some creditors Hoffman made arrangements for inspection of the stock (196).

Meanwhile some of the creditors became dissatisfied with the prospective liquidation in the assignment proceeding and on April 3d, 1937, an involuntary petition in bankruptcy was filed against the assignor by creditors represented by petitioner Shulman (199, See Exhibit 3, 980). On the same day (980) the United States District Court entered an order staying the assignee's sale. The

order was based upon a verified petition setting forth the execution of the assignment for the benefit of creditors and the facts preceding the filing of the bankruptcy petition (981-2). Hoffman moved to have the stay vacated (198-199), but the Court denied his application, suggesting that the parties get together (200).

Hoffman, enraged by this turn of the proceedings, on April 5th, 1937, (288, 203) complained to the Federal Bureau of Investigation. He declared that on March 25th, 1937, he had had a conversation with Martin M. Goldman in the presence of Wishbow, the auctioneer, wherein Martin M. Goldman proposed a plan for the sale of the assets in bulk for a price sufficient to permit the payment of a 40% dividend to the creditors, which plan contemplated that the true price should not be disclosed to the creditors but that a lesser price should be reported and the difference be divided among Kandell, Hoffman and Goldman (193). Wishbow was called as a witness by the Government and his testimony as to the alleged conversation of March 25th, 1937, was thus summarized by the trial judge (364):

> "He testified on direct examination so far as he recalled he heard no conversation out in the hall or any other place that there was to be a secret price to be paid for the goods different from the one that was actually to be paid out. I was watching his testimony closely and that was his testimony."

Then on April 7th, 1937, a conversation took place in petitioner Shulman's office, with Shulman, Martin M. Goldman and Hoffman present (205). At this time Hoffman was acting under instructions by the F. B. I., and pretended to acquiesce in the alleged proposed plan. Hoffman alone knew that agents of the F. B. I. were listening in the adjoining office by means of a detectaphone or other hear-

ing device. At this meeting, according to Hoffman himself, "Martin Goldman stated that he came into the picture to represent the creditors, and that he was going to look out for the best interests of all creditors, and then there were some other discussions about assignments and sales and the like" (205).

Three subsequent conferences—on April 14th, 21st and 26th, 1937—took place in Shulman's office. Neither of the Goldmans was present at any of these. The conversations, which were between Shulman and Hoffman, were recorded by Government agents, who were listening in the next office in the same manner.

Thereafter, on May 14th, 1937, Hoffman applied for and obtained a court order dismissing the bankruptcy petition; the papers on this motion were drawn by petitioner Theodore Goldman (221, 1007-1008). Any arrangement to conduct a bulk sale was, however, precluded by the refusal of one of the creditors to assent, with the result that the assets were ultimately sold at auction. (282). The proceeds of this sale were distributed to the creditors in the form of a dividend of between 16 and 17 per cent. instead of the 40 per cent. called for by the unconsummated bulk sale plan (282, 1009).

The principal issue litigated was whether petitioners were acting in good faith and in the interests of the creditors or were actually planning to dispose of the assets for an amount greater than would be disclosed to creditors in order secretly to divide the surplus. It may be noted that as to petitioner Theodore Goldman, the theory of the prosecution and of the Trial Court was only that he had an opportunity to acquire guilty knowledge because of his partnership with his brother Martin (513, 935) and that the circumstantial evidence entitled the jury to pass upon the question of his alleged complicity. On the issue of good faith the Circuit Court of Appeals said no more (1094) than that this was a question for the jury; it did

not separately discuss the evidence relating to any one of the petitioners.

In preparation for trial petitioner Shulman ascertained, through the superintendent of his building, that agents of the Federal Bureau of Investigation had, without his consent, entered his office late at night and installed a dictaphone device with wires running into Room 1508, adjoining Shulman's office, which was vacant. A motion was then made to suppress any evidence which might have been obtained as the result of such installation and trespass (20-40). In opposition to that motion, Harold P. Turner, one of the agents of the Federal Bureau of Investigation, denied (41) that any telephone wires had been tapped, but admitted that an apparatus had been installed to make it possible to overhear conversations, saying that use was made of an existing hole where a pipe ran to conceal a microphone in the surface of the wall separating the two rooms.

At the preliminary hearing held on this motion (44-168) it appeared that on account of noises in the pipe, the dictaphone proved useless as a means of overhearing conversations and that the agents had also installed a detectaphone, which is a microphone which amplifies sounds through a wall. This was placed on the wall between Rooms 1508 and 1509, but was wholly in Room 1508. No mention had been made of the installation of this detectaphone in the affidavit submitted by the government in opposition to the motion to suppress (41). At the preliminary hearing it appeared also that the government agents had entered Shulman's office for the purpose of determining its layout and that a description of that layout was given to the agent who placed the detectaphone and that it helped him in locating where that detectaphone should be placed. We will discuss this testimony in more detail hereafter.

At the conclusion of the preliminary hearing the presiding judge denied the motion to suppress on the ground that nothing had been overheard through the dictaphone and that the installation of the detectaphone constituted no violation of the rights of the defendants (164-168). At the trial the testimony with regard to what occurred during four conversations in Shulman's office was given by several agents of the Federal Bureau of Investigation (372-453; 466-494), despite objection on the ground that the receipt of such testimony constituted a violation of petitioners' constitutional rights (381, 382).

It appeared also that the government agents had overheard Shulman's end of several telephone calls. The Judge overruled objections to the use of such information by the agents, holding that their overhearing of those telephone conversations was not within the prohibitions of the Communications Act (168). This ruling was also adhered to at the trial by permitting the introduction in evidence of the telephone conversations so overheard (409, 410; 413; 414; 420, 421; 433; 445-449; 450).

While originally the motion to suppress was made only by petitioner Shulman (21), the other petitioners joined in the motion at the preliminary hearing (84, 499), participated in the cross-examination of witnesses (74, 91, 107, 123, 155) and were allowed the benefit of exceptions to the denial of the motion (168) and also to the overruling of their objections to the receipt in evidence of the agents' testimony (382).

The agents of the government admitted, at the preliminary hearing, that they had refreshed their recollections by consulting certain memoranda which they had made at the time of the occurrences. These memoranda covered various matters, such as the entry into Shulman's office and the installation of the two devices and the manner of listening over them. The agents did not, however, actually refer to the memoranda while on the

witness stand. For that reason, the Trial Court, although it had first intimated that it would rule otherwise, refused the demand made by counsel for defendants that these memoranda be produced and submitted for inspection.

The Circuit Court of Appeals upheld the Trial Court in all respects. It concluded that the use of the detectaphone was "only an instance of eavesdropping" and that nothing had been obtained as the result of the secret entry into Shulman's office (1095). It held that the memoranda could not be inspected except when a witness actually used them when testifying (1096).

The Circuit Court also held that there had been no interception of a communication so as to make applicable the provisions of the Communications Act (1095).

Errors Intended to be Urged.

Separate assignments of error were filed on behalf of Shulman (1060-1078) and on behalf of Martin and Theodore Goldman (1052-1065) which, however, are substantially to the same effect. Of these reliance is placed upon No. 5 (1053-54, 1066-67), which deals with the denial of the motion to suppress evidence, Nos. 6, 7 and 8 (1054, 1068), which deal with the request to inspect certain memoranda, and Nos. 11 and 12 (1061, 1075) which deal with the introduction in evidence of the testimony of the government agents.

SUMMARY OF POINTS RELIED UPON.

POINT I.

An unconstitutional trespass made possible the overhearing of the conversations admitted in evidence.

POINT II.

The use of the detectaphone by the agents of the Federal Bureau of Investigation was a violation of the Fourth Amendment.

POINT III.

The amplification of portions of telephone conversations by the Government agents without the consent of any party thereto constituted a violation of §605 of the Federal Communications Act and the use in evidence of testimony of these conversations was improper.

POINT IV.

Counsel for defendants were entitled to inspect the memoranda used by Government witnesses to refresh their recollection prior to testifying, particularly when such memoranda related to the manner of obtaining evidence challenged as being in violation of defendants' constitutional rights.

ARGUMENT.

POINT I.

An unconstitutional trespass made possible the overhearing of the conversations admitted in evidence.

In opposition to the motion to suppress the Government submitted only agent Turner's affidavit (41). This described the microphone in the hole in the wall which was installed at the time of the illegal entry into Shulman's office, but made no mention whatsoever of any detectaphone. Subsequently, on the preliminary hearing, it developed for the first time (80, 81) that the Government's agents were relying exclusively upon a detectaphone as the alleged instrumentality for overhearing. Apart from the disingenuous character of this attitude, the surprising change in position has an important bearing upon Point IV, (*infra* page 27) relating to the inspection of the agents' memoranda.

As already noted, the Trial Court ruled that no use was made by the Government of the microphone installed as the result of the trespass (165). And this view was accepted by the Circuit Court of Appeals (1095). The Trial Court's ruling was assigned as error in the Circuit Court of Appeals (1053, 1066) and the decision of the Circuit Court of Appeals was complained of in the petition for certiorari originally filed herein (petition pp. 11, 13).

It is conceded that two agents of the Federal Bureau of Investigation obtained entrance to Shulman's office, Room 1509, on the night of April 6, 1937 for the purpose of installing a microphone and that this was done without his knowledge or consent (120, 463). They studied the layout of the office (103) and installed a microphone in a small opening in a wall which ran from that office to the adjoining vacant office of which they had taken pos-

session, Room 1508 (86, 87). The microphone was connected by wire to an amplifier located in the latter room. Both these agents, Ransom and Turner, testified at the preliminary hearing. Both agreed that one of their purposes in entering Shulman's office was to study the layout of that office. As Ransom said (91):

> "Q. So that when you went from 1508 around into 1509 one purpose was to see where the desk was and where the chairs were and where the instrument* could be most advantageously located? A. Well, I think it had been described to me as to what was there.
>
> "Q. I see, that was your purpose? A. That was one purpose, yes, that is right.
>
> "Q. That was one purpose, that is what I mean, it was a necessary purpose, wasn't it? A. Yes."

Turner was asked about the entry into Shulman's office as follows (120, 121):

> "Q. And you got a pretty good idea of Shulman's office layout? A. I had at that time, yes, sir.
>
> "Q. And you still had the next day? A. Yes, sir."

Ransom was not present on the next day when the microphone was discarded (87), but Turner was. However, Turner did not install the detectaphone. That was installed by another agent, Harold O. Schroeder (100). Schroeder testified that Turner had described the arrangements of Shulman's office to him and that this helped him in selecting a location for the detectaphone (103):

> "Q. Mr. Turner had a pretty good layout in his mind's eye on the Shulman office layout, didn't he? A. Yes, sir.
>
> "Q. Didn't that help you somewhat in picking out a good spot to listen to the conversation? A. It did."

---

* The instrument to which reference was made in this questioning was the microphone later discarded, not the detectaphone later used.

Schroeder was very reluctant to admit that Turner had told him where to put the detectaphone (112-115) and, on re-direct examination by the government, sought to convey the impression that he located its position solely by experiment (116). However, he did not retract the testimony originally given on cross-examination that Turner's description of the layout of Shulman's office helped him in picking out a good spot to listen to the conversation. And no amount of testimony that the location of the detectaphone was determined by experiment can take away from the force of the first testimony. For the knowledge of the layout of Shulman's office was bound to be of help in determining the area within which the trial uses would be made, in saving time in the trial and error placement of the detectaphone. Without that so much time might have been lost in the process of trial and error that the result might have been negligible.

Turner, moreover, admitted on cross-examination that the two installations were not isolated, but that he considered them as part of one job (134).

It should also be noted that Shulman's office was divided into two parts, an outer office and an inner office (see diagram, 952). The all which divided the office from Room 1508, the vacant room occupied by the agents, and on which the detectaphone was placed, ran the length of both of these divisions of Shulman's suite. Thus the trespass into Shulman's suite apprised the agents as to which half of the wall of Room 1508 should be used in order to overhear what might be said in Shulman's private office.

Certainly, in view of all the facts and Schroeder's express admission that he was helped by the knowledge of the layout of Shulman's office obtained by Turner, it cannot be said that the trespass did not help in obtaining the ultimate evidence.

This Court has laid down the salutary rule that when there has been an entry into premises in violation of the

Fourth Amendment, any evidence obtained as the result of such violation must be banned. This principle was first clearly stated in *Silverthorne Lumber Company* v. *United States*, 251 U. S. 385, where the Court said:

> "The knowledge gained by the Government's own wrong cannot be used in the way proposed."

And in *Nardone* v. *United States*, 308 U. S. 338, this Court reiterated that rule. There, the illegality consisted not in an unlawful search as in the *Silverthorne* case, but in illegal wiretapping. Nevertheless, using the *Silverthorne* case as authority, this Court held that indirect use of evidence improperly obtained was improper since otherwise the very methods deemed "inconsistent with ethical standards and destructive of personal liberties" would be invited. Since in that case no opportunity had been allowed for investigation into the illegal sources of the material offered, the conviction was reversed in order to give the accused an opportunity to prove "that a substantial portion of the case against him was a fruit of the poisonous tree." The inference is, of course, plain, that the fruit of such tree may not be used.

The basic principle involved in those cases was recognized also in the Circuit Court of Appeals for the Second Circuit in *United States* v. *Goldstein*, 120 F. 2nd 485, now before this Court. There the question arose in considering whether or not witnesses might be allowed to testify who had been induced to become informers because of wiretapping conducted by the government. The Court recognized that testimony by witnesses so situated would be "fruit of the poisonous tree", but ruled adversely to the contention of the defendants in that case on the ground that they were not in a position to complain of the wiretapping because their own wires had not been tapped.

The same principle was applied to a somewhat different set of facts in *Nueslein* v. *District of Columbia*, 115 F. 2nd 690. There Judge Vinson fully reviewed the decisions of this Court and other Federal Courts and held inadmissible a statement made by a defendant at the time officers illegally searched his premises. His conclusion was that in no other way could the guaranty of the Fourth Amendment be made effective than "to dissolve the evidence that the officers obtained after entering and remaining illegally in the defendant's home."

In the case at bar the Court at the preliminary hearing concluded that the unlawful entry did not aid the agents in attaching the detectaphone, saying:

> "They could just as easily and just as well by the method that they did adopt, of trying out various places on the wall in Room 1508, determine and locate the space upon which this device should be attached there, as if they had never been in 1509" (165).

This ruling was apparently the basis of the statement by the Circuit Court of Appeals:

> "Nothing was obtained as the result of any secret entry of Shulman's office. No trespass upon his premises in any way helped to obtain the evidence" (1095).

It is submitted that in view of all the testimony there is no basis for the conclusions reached either by the trial judge or the Circuit Court of Appeals and that in actual fact the unconstitutional trespass did facilitate the installation and use of the detectaphone, and did, therefore, materially contribute to the hearing of the conversations testified to by the government agents. These conversations were "fruit of the poisonous tree" and should have been excluded, entirely aside from the question whether or not the use of the detectaphone in and of itself violated the Fourth Amendment.

POINT II.

The use of the detectaphone by the agents of the Federal Bureau of Investigation was a violation of the Fourth Amendment.

The circumstances with regard to the installation of the detectaphone have already been outlined. Three agents of the Government listened in, Bodinger, Turner and Rubenstein. Of these Bodinger was a stenographer (372). He testified that he had taken down everything which he had overheard (373), although there were many instances when he was unable to hear what was said because the voices were too low or too loud (378). Objection was taken by counsel for Shulman to the use of the transcripts on the ground that the evidence had been obtained in violation of his constitutional rights (381). Mr. Corbin, the attorney for the Goldmans (169), made a similar objection on behalf of his clients (382). Exceptions were duly noted.

Bodinger then read the transcripts (382-451). These show that in more than three hundred instances the listener missed what was said. At times nearly half of what was noted down "was something missed." Four separate conversations were overheard. The first of these was the one which took place on the afternoon of April 7, 1937 (374, 383). Much of the transcript is meaningless. It starts out with a conversation between Hoffman and Shulman. At some later point Martin Goldman entered (see 389) and there was excited argument during the course of which Goldman accused Hoffman of having made some false statement about him to the judge (390). Subsequently Goldman left (see 406) and then Hoffman left (409). The listeners overheard a telephone conversation which Shulman had with some unidentified person in which Goldman was referred to as "smart" (409).

The second conversation took place on April 14, 1937, again in Shulman's office between Hoffman and Shulman. But this time Goldman was not present (412). This conversation consisted mostly of a discussion of how much the different parties were to receive (412-421). The third conversation was also between Hoffman and Shulman and took place on April 21st (421-442). It included numerous references to Goldman and what he was to receive (431, 432, 440, 441). The last conversation took place on April 26th again between Hoffman and Shulman (442-451). Martin Goldman was referred to specifically as receiving "an equal share" with Shulman and Hoffman (448, see also 451).

These transcripts, substantially corroborated by the other agents, Turner (466, 467) and Rubenstein (479), were the chief reliance of the government in corroboration of Hoffman. They were, therefore, essential to the case against petitioners.

It is submitted that the use of such evidence under the circumstances of this case was a violation of the Fourth Amendment since the evidence was obtained in violation of the right of privacy guaranteed by that amendment.

This Court has, with rare exceptions, given to the Fourth Amendment a broad and liberal construction so as to preserve the basic purpose for which it was placed in the Constitution. That the Fourth Amendment was created to embody an ancient principle of English liberty that "every man's home is his castle" has been recognized by various writers on constitutional law.* It was enacted against a historical background of the use of general warrants in proceedings for seditious libel, which resulted in the judgment of *Entick* v. *Carrington*, 19 How. St. Tr. 1029. There Lord Camden declared the objection-

* Cooley, Constitutional Limitations, 7th Ed. p. 425;
McLane, Constitutional Law, p. 313;
Von Holtz, Constitutional Law, p. 257.

able practices illegal, ruling, among other things (p. 1073) that a search for evidence as such was illegal. And this Court in *Gouled* v. *United States*, 255 U. S. 298, carried over into American constitutional law this decision of Lord Camden, by ruling that not even a search warrant could be obtained for the purpose of securing to the Government material which was evidentiary in character only.

While the emphasis of many of the decisions is upon the search for and seizure of tangible objects, it must not be forgotten that the Fourth Amendment condemns not merely a seizure, but a search as well, and search there may be for purposes other than the seizure of tangible objects.

It will be readily conceded that the Amendment was designed to protect the citizen against the "prying eyes" of the government. (Cooley, op. cit. 425). Can it be said that the government may use its ears without let or hindrance?

The Trial Court in this very case expressed the opinion that had the conversations been overhead as the result of the microphone originally placed in the office of Shulman, the testimony would have been inadmissible as in violation of constitutional right (165). Nevertheless, there would have been no search or seizure in the conventional sense.* In the mind of the Trial Court the distinction appears to have been between a mechanical device which was placed inside of the office, and one merely applied to its exterior walls. We submit that no such narrow distinction can constitutionally be made. Surely, the outside wall is as much a part of the office or home as is the inside wall. If this had not been an office among many offices in a large building, but a shack isolated in the woods, could it be said that the installation of a scientific instrument on the *outside* wall of such a shack would not be a violation of the constitutional guaranty, whereas

* As there was not, of course, in the *Boyd* case, 116 U. S. 616.

there would be such violation had the mechanism been placed within the four walls? In both cases the government has actually trespassed upon the premises by an invasion thereof not consented to by the owner or occupant.

What the government has done here is to "tap" the walls of an office—that it should be an office rather than a home is, of course, inconsequential (see *Silverthorne* v. *United States*, *supra*). But for the decision in the *Olmstead* case, 277 U. S. 438, it could hardly be doubted that any tapping, whether of walls or of wires, would be an invasion of the constitutional guaranty. Nevertheless, within the precise reasoning and meaning of that decision, it is submitted that these petitioners have been materially aggrieved and are entitled to a reversal. The language there employed by the Court establishes that the tapping of the walls of a home or office is distinguishable in principle from the tapping of telephone wires. For, as Chief Justice Taft declared for the Court in the *Olmstead* case:

> "The reasonable view is that one who installs in his house a telephone instrument with connecting wires, intends to project his voice to those quite outside, and that the wires beyond his house and messages while passing over them are not within the protection of the Fourth Amendment" (p. 466).

The Court thus took the position that where a person used a telephone wire, he ran the risk that some one might overhear the conversation on that wire since his intention was to project his voice beyond the protection of his private premises.

Not so is the case of persons conferring in a lawyer's office (apart from any question of privilege). They have no intention of projecting their voices. True, if they speak too loudly they know they may be overheard; so,

if they leave doors or windows open, they run a like risk. Where, however, as here, all ordinary precautions are taken to preserve inviolate the confidential character of the discussion occurring within the office, it would be a destruction of all right of privacy to permit what was so confidentially discussed to be used by government agents who were enabled to overhear the discussion through the use of extraordinary mechanical means,* particularly where those means were directly applied to the walls of the premises themselves.

The Circuit Court of Appeals characterized this as merely eavesdropping (1095). That is not an adequate description of what happened. Eavesdropping connotes a situation where the person whose conversations are overheard has been careless. It is not constitutionally prohibited, because presumably the Constitution helps only those who help themselves. So if a person does something before a window through which he can be observed, he has not exercised the requisite self-help and the observer, whether he use his unaided eyes or a field glass, is entitled to give testimony concerning what was observed. So if a person speaks concerning private matters in a tone of voice loud enough to carry through doors or walls, he cannot object if a person, who is stationed outside of the premises, testifies to what he overheard. On the other hand, if reasonable and ordinary precautions to preserve privacy are observed, the Government should not be able to put in evidence information obtained by the use of some extraordinary scientific device, whether it be, as Judge Brandeis intimated in the *Olmstead* case, *supra*, at 474, apparatus which would photograph the contents of papers in a person's desk without ac-

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* F. B. I. Agent Ransom testified that the detectaphone could be employed to overhear conversations through a stone wall, saying (95):

"Q. Can you take that through a stone wall?
A. It is possible, yes."

tually removing the papers, or the device used here which abstracted sounds through the walls. That in neither case there was a technical seizure should make no difference. In both instances there was, in effect, a search. And surely the spirit of the Fourth Amendment was violated.

The cases relied upon in the Circuit Court of Appeals (1095) have no application to the case at bar. In *Smith* v. *United States*, 2 F. 2nd 715, it was claimed that the discovery of liquor in an open car was in violation of the Constitution because the Government agents used a flashlight to see the liquor. This argument was rejected, the Court stating:

> "A search implies some exploratory investigation. It is not a search to observe that which is open and patent, in either sunlight or artificial light."

These observations might apply to the case at bar had conversations been overheard by the ordinary methods of eavesdropping. They have no relation to the particular methods here used.

And in the other case cited, the *Feldman* case, 104 F. 2nd 255, the facts are still less similar. There the agents, after having seen one defendant load a car with suspicious material, followed him to his home, where they smelled the odor of cooking mash. The Court held that they had the right to enter the home, arrest the occupants and seize the material since a felony was being committed in their presence. And the search was but a lawful incident of the arrest.

The various cases cited by the Government in its brief filed in opposition to the applications for writs of certiorari are of no assistance. Surely the two cases from this Court, the *Agnello* case (269 U. S. 20) and the *Lee* case (274 U. S. 559) are in no way pertinent here. In both of these cases the Government agents merely observed by the use of their eyes, unaided, actions which the defendants took no pains to conceal.

In none of the other cases cited (Brief, pp. 8, 9) was any constitutional point raised. In the *Schoborg* case, 264 Fed. 1, there was passing reference to the fact that evidence was overheard as the result of the installation of a dictograph. However, since this was installed by private persons there could have been no objection, even if papers had been seized (*Burdeau* v. *McDowell*, 256 U. S. 465); besides no contention was raised by defendants that their constitutional rights had been invaded. In the *Weiss* case, 34 F. Supp. 99, it does not appear how the "room conversations" were overheard, but in any event no point was raised by defendants with regard to these, their objection relating solely to wiretapping evidence.

Nor was any constitutional issue raised in any of the State cases. In several of these, as in the *Cotta*, *Allen*, *Goode* and *Everson* cases, there was conventional eavesdropping. The *DeLore* case involved eavesdropping over the telephone on a party line, but it was eavesdropping by a private individual and the testimony was offered in a civil action—it is inconceivable, therefore, what bearing that case has on the problem here presented. In two of the cases to be sure, those from Massachusetts and Minnesota, conversations were overhead as the result of dictographs installed in prison cells. While there was no constitutional question discussed in either of these cases, it should be noted that both these jurisdictions reject the rule established by this Court requiring the disregard of evidence obtained in violation of constitutional right. (See *Commonwealth* v. *Wilkins*, 243 Mass. 356; *State* v. *Kaasa*, 198 Minn. 181). Moreover, it is doubtful whether a prison cell is a man's "home" within the Constitutional guaranty.

We believe, therefore, that none of the authorities relied upon by the Circuit Court of Appeals govern the disposition of this case and that the spirit of the decisions heretofore rendered by this Court under the Fourth Amendment calls for a ruling that the conversations tes-

tified to by the government agents were inadmissible because overheard in violation of the Fourth Amendment.

May we call this Court's attention to the fact that only recently the Congress of the United States evidenced its great concern for the right of privacy by refusing to amend the Communications Act, though at the request of the Department of Justice, to authorize the use of wire-tapping by government agents in certain classes of cases. In opposition to the proposed legislation representatives of all of the labor organizations, including the railroad brotherhoods, and representatives of every shade of liberal opinion, appeared.* We believe that this attitude on the part of Congress is but a further illustration of the great importance attached to the right of privacy.

Nor do we believe that the fundamental rights guaranteed by the Constitution can be relaxed because of the existence of any emergency, not even the existence of the war just forced upon us. The lapse of 75 years has not dulled this Court's ringing words in *Ex parte Milligan*, 4 Wall. (71 U. S.) 2, at 120:

> "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."

We submit that if the decision now under review is permitted to stand, its effect upon the privacy of the people wil be disastrous. Such a decision would be an invitation to government agents to invade the home and, by the use

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*See hearings before sub-committee No. 1 on the Committee of the Judiciary, House of Representatives, 77th Congress, First Session, on H. R. 2266 and H. R. 3099 (1941).

of a similar device, overhear conversations between husband and wife. They would invade the privacy of the great professions of law and medicine and overhear conversations between physician and patient, and attorney and client. Indeed, they would also be able to invade the age-old sanctity of the confessional and overhear conversations between priest and penitent. We submit that no such things should be permitted to come to pass.

POINT III.

The amplification of portions of telephone conversations by the Government agents without the consent of any party thereto constituted a violation of §605 of the Federal Communications Act and the use in evidence of testimony of these conversations was improper.

This error was duly reserved by timely objection and exception at the preliminary hearing (168), by specification in the assignments of errors filed by all petitioners (Nos. 11, 1061, 1075), and inclusion in both the original petition for certiorari (pp. 17-18) and the petition for rehearing (p. 5).

The facts bearing on the point may be briefly stated and are uncontroverted. In the course of listening via the detectaphone to what was happening in petitioner Shulman's office, the Government agents heard and recorded the contents of one end of each of at least seven telephone conversations. In each instance they were able to hear what petitioner Shulman was saying on his telephone, but they apparently did not hear what the other party was saying. When it appeared that the government would offer testimony of the contents of these conversations, counsel seasonably protested (168) "that there was an interception of telephone messages which in my opinion are just as much a violation of the Federal Communi-

cations Act of 1932 and 1933 as it would be as if those wires were tapped." The objection was overruled, the trial Court declaring "that that is not the type of telephone wires within the meaning of the Communications Act." An exception applicable to all defendants was noted (168).

Under this ruling the prosecution was permitted to read into evidence the contents, so far as the microphone had rendered them audible, of the seven telephone conversations mentioned. They appear in the transcript of record at the following respective points: fols. 1225-1229; 1238-1239; 1239-1240; 1260-1261; 1299; 1333-1345; and 1347-1348.

Clearly two of the conversations, the first and the sixth, bear directly upon the subject-matter of the charge. They include talk that will bear an incriminating construction. This is so obvious that the Circuit Court of Appeals (1093) quoted at length from the first conversation to sustain its holding that the evidence established the existence of the alleged conspiracy. However, the Circuit Court held (1095): "No communication by wire or radio was intercepted to make applicable the provisions of Sec. 605 of the Communications Act of 1934 (c. 652, 48 Stat. 1064, 1103; 47 U. S. C., A. Sec. 605) as construed in *Nardone* v. *United States*, 308 U. S. 338."

We contend that this ruling was reversible error. The pertinent portion of the statute reads simply:

> "* * * and no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; and no person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by wire or radio and use the same or any information therein contained for his own benefit or for the benefit of an-

other not entitled thereto; and no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto * * *"

The first and third of the three clauses quoted are applicable to both interstate and intrastate communications (*Nardone* v. *United States*, 302 U. S. 379; *Weiss* v. *United States*, 308 U. S. 321). In substance the law forbids a person not authorized by the sender to intercept any communication and divulge its existence or contents. Moreover—and this is especially significant in the instant case—the statute explicitly bars the disclosure where a person not authorized has become acquainted with "any part" of the contents of an intercepted communication. It has been further held that even the consent of one of the parties to a telephone conversation is not sufficient warrant for its reception in evidence; and that an interception by means of an existing telephone extension is nevertheless a forbidden interception (*United States* v. *Polakoff*, 112 F. 2d 888, cert. den. 311 U. S. 653).

The Government's argument in answer to this point was to this effect: that petitioner Shulman's words were overheard rather than intercepted; that "it is of the essence of a telephone interception that the interceptor is placed in a position to hear both parties to the conversation;" and that "the user of a telephone entrusts his message to the circumambient air which, indifferently, conveys his words to telephone pick-up, friendly bystanders, casual eavesdroppers, or officers of the law bent on securing evidence" (brief in opposition to petition for certiorari, pp. 12-13).

It is submitted that none of the answering arguments vitiate the point. In the first place, the distinction between overhearing and intercepting is not a valid one. The statute makes no mention whatsoever of wire-tapping, physical contact with telephone instruments or the means employed to ascertain the existence or contents of a communication. The end to be accomplished is safeguarding the privacy of the indicated classes of communications. That end is just as effectively frustrated by the use of a detectaphone in the next room—enabling the listener to hear what is being said on the telephone—as by the most arrant form of wire-tapping.

Nor could the statute by its very character be limited to wire-tapping as such, for it embraces telegraph and radio communications as well as those by telephone. One may just as unlawfully become apprised of the contents of a communication by looking over a messenger boy's shoulder as he walks with a telegram in his hand, as by tapping a wire. As for radio messages, the listener who surreptitiously overhears the words by concealing himself in the room where they are being spoken into a microphone, is no less an unlawful interceptor than he who plucks them from the air with his short-wave receiving set. To argue that a telephone communication does not become invested with its character as such until it is actually being borne by the wires, is to introduce a limitation that the statute does not command. In addition, this tenuous qualification would seriously curtail the law's effectiveness and point a way to facile violation. The construction urged by the Government would appear to contravene the legislative intent—which expressly goes so far as to forbid the divulgence of the very existence of a communication.

The only practical construction that can serve the statute's purpose is simply this: once a speaker has uttered words with the intent that they constitute the transmission of a telephonic conversation, the protective force

of the statute becomes operative, and no unauthorized person should be permitted thereafter to divulge what he had managed to overhear as part of the conversation in question. The analogy of radio impulses to the human voice is a cogent one, for both the impulses and the sounds of the voice are capable of being detected while in the air and amplified by suitable apparatus to facilitate listening.

There is no merit in the contention that the interceptor —to come within the statutory ban—must be able to hear both parties to the conversation. The statute itself furnishes three reasons for rejecting such a construction. (1) It uses the word "communication," and does not mention "conversation." What one party says to another—regardless of the response—is patently a communication. (2) The statute expressly applies to parties becoming acquainted with "any part" of an intercepted communication. (3) The prohibition against divulgence applies indiscriminately to telegraph and radio, as well as telephone; therefore, the proposed requirement that the words of both parties be intercepted is altogether alien to the scheme of the statute.

The suggestion that the user of a telephone entrusts his message to the air and is therefore deemed to acquiesce in its next-door interception via detectaphone is, we submit, a rather extreme distortion of intent. On the contrary, the one telephoning may reasonably be considered as doing so in full reliance upon the law which confers an inviolable privacy upon his communication. If any person, knowing the identity of a friend to whom petitioner Shulman had frequent occasion to telephone, used a detectaphone in like fashion to pick up the other end of the conversation, the two listeners could jointly have reconstructed the entire conversation, and all without the authorization or consent—or, indeed, the knowledge—of either Shulman or his friend. This result would be achieved without physical contact with any telephone

apparatus or wire. In short, the illicit listeners would have attained the same results as though they had engaged in wire-tapping. The statute recognizes an evil and affords a remedy. It makes no mention at all of methods, and legal principle does not require that any such groundless distinction be engrafted on the law.

POINT IV.

Counsel for defendants were entitled to inspect the memoranda used by Government witnesses to refresh their recollection prior to testifying, particularly when such memoranda related to the manner of obtaining evidence challenged as being in violation of defendants' constitutional rights.

At the preliminary hearing it appeared that the agents had refreshed their recollections by reference to notes which they had taken at the time of the transactions. The right to inspect these notes was denied to defendants' counsel. This denial was sustained in the Circuit Court on the narrow ground that the memoranda had not been used by the witnesses while they were on the stand. We submit that no such narrow ground justifies the rulings in this case.

As has already been discussed, one of the important questions in the case is the extent to which the unlawful trespass into Shulman's office contributed to the hearing of the conversations which formed the basis of the testimony at the trial. It has already been pointed out that Schroeder testified that he installed the detectaphone, and that he was aided in doing so by Turner's description of the layout (103).

Schroeder, on cross-examination, referred to certain pencilled notes which he said he dictated immediately

after coming back on the first afternoon (106, 107). He stated that he had refreshed his recollection by looking at these notes (106) and that they covered the matters which he had testified about that day (108). Counsel asked the right to examine them (108). The Court refused to permit this to be done, stating that it had examined the notes and that they were not relevant at that time and contained matter which it would be improper to let the defense see (108).

Turner also testified that he had made certain notes at the time (123). At first the Trial Court said that it would allow these to be inspected, with the exception of one or two sentences, which, perhaps, should be excluded (127), but later the Court changed its mind on the ground that the reference to the memoranda was injected by counsel for the defendants and the witness had not used the memoranda (128). Turner was then recalled and admitted that he had refreshed his recollection before testifying by looking at these notes, saying (132):

> "Q. Otherwise you couldn't recall, could you, and that applies to this case, doesn't it? A. Yes, sir."

And later he testified that he could not fix certain times without reference to the memorandum he had dictated (145). Counsel then renewed the demand for the right to inspect and this was denied and exception noted (151). A similar ruling was made with regard to memoranda prepared by the agent Rubenstein (156).

It is evident that the testimony which these witnesses gave was not only based in part on the memoranda not produced, but could not have been given had the witnesses not refreshed their recollections by examining these memoranda before coming to the witness stand. Under these circumstances it is submitted that cross-examining counsel has the right to look at the memoranda and that the mere circumstance that they were not used

by the witness while on the stand should not be controlling.

There are two reasons why a memoranda relied on by a witness should be examined by opposing counsel. One is to show that in fact there were no contemporaneous notes and that the witness had been improperly given something to enable him to testify. Another is to permit counsel to show to the jury that the witness has omitted portions of the contemporaneous memorandum which might be favorable to the side represented by such counsel. Both reasons may be as pertinent when the memoranda were examined before testifying as when the witness uses them on the stand.

It seems to us that whether or not the witness actually had the memoranda while on the witness stand should not be the criterion. A witness with a good capacity to memorize might so well absorb notes given to him by the attorney for one side that he need not refer to them while on the stand. Yet his claim that he had his recollection refreshed by reading an alleged contemporaneous memorandum before going on the witness stand would be false and should be exposed. Only the production of the paper would show that it was not a contemporaneous memorandum and thus bring about the impeachment of the witness's testimony. So where a witness has testified that he used the contemporaneous memorandum for the purpose of refreshing his recollection, and there is no question about the genuineness of that memorandum, still the interest of truth would be advanced by requiring the production of the memorandum so as to make sure that the zealous witness has not colored the facts for the purpose of the particular trial.

To make the right to inspect the memoranda depend upon whether or not the witness used them at the trial puts a premium on witnesses who are able to memorize details. The search for truth should not be determined by such considerations. No good reason can be advanced

why a witness who admits having refreshed his recollection by reference to memoranda should not be required to submit those memoranda to the cross-examining attorney. Counsel should have the right to check the statements of the witness, to determine whether they really are what the witness claims them to be.

This Court has not had occasion to pass upon the precise question. The discussion in *United States* v. *Socony Vacuum Oil*, 310 U. S. 150 at 233, throws no light upon the problem here presented because the Court merely indicated that there was no iron clad rule where the Trial Court had adopted appropriate procedure to prevent the improper use of material relied upon by a witness for refreshing his recollection. It was because of the close control by the Trial Court of the Grand Jury testimony that this Court held that there had been no abuse of discretion in that case. Obviously in that case no question existed with regard to the genuineness of the memorandum, nor had it been used by the witness for the purpose of refreshing his recollection before the trial. Thus there was in that case no situation such as in the case at bar, where an examination of the memoranda relied upon might have cast discredit upon the story given by the witness.

Professor Wigmore has expressly stated that he believes that the rule here contended for by petitioners should apply, all of the reasons for the rule with regard to memoranda used by the witness while on the stand applying as well where the memoranda were used by the witness beforehand. This has been his view throughout the various editions of his work. In his Third Edition (Volume 2, p. 111) he said:

> "The rule should apply, moreover, to a memorandum consulted for refreshment before trial and not brought by the witness into court; for, though there is no objection to a memory being thus stimulated,

yet the risk of imposition and the need of safeguard is just as great. It is simple and feasible enough for the Court to require that the paper be sent for and exhibited before the end of the trial."

In *State* v. *Deslovers*, 40 R. I. 89, the Court reached the same conclusion, saying:

"The mere fact that the witness did not have the record immediately before him when he gave his testimony upon the stand does not seem to us to be material in view of the further fact that he had a very short time previously refreshed his recollection by its examination; such examination being made in contemplation of the evidence which he was about to give. Under such conditions he must be said to have obtained substantially the same assistance from the record which he would have obtained from its perusal during his examination.

"In the present case the defendant should have been permitted to show to the jury, if he could, that the statements of the witness were inconsistent with the earlier memorandum or record from which he claimed to have refreshed his memory. This he could not do unless he could see the record itself."

See also *Kouba* v. *Horacek*, 63 Hun 636, opinion reported in full in 6 N. Y. Supp. 250, and *Ratner* v. *Sadowsky*, 156 N. Y. Supp. 292.*

The Circuit Court of Appeals reached the contrary conclusion on the theory that the witness would not be

* An examination of the record on appeal in the files of the Appellate Term of the Supreme Court for the First Department in New York City shows that the memorandum in question had been used by the witness for the purpose of refreshing his recollection prior to his taking the witness stand, and had not been used by him while on the witness stand, although it was in court. The Trial Court ruled that the memorandum could be used by cross-examining counsel only if he consented that it go in the evidence; the Appellate Court reversed, holding that the memorandum could be used without conditions.

imposed upon or receive any improper communications when the paper was not handed to him on the stand, forgetting that a witness with a good capacity to memorize could receive the improper communication in advance. Indeed, the very dramatic illustration given by Professor Wigmore in explanation of the general rule (Vol. 3, p. 110) would be just as pertinent had the witness in that case been able to memorize the material which was so devastating in its effect when submitted to the scrutiny of cross-examining counsel.

Three cases were cited by the Circuit Court of Appeals. One of these, *C. W. Hall Company* v. *Marquette Cement Manufacturing Company*, 208 Fed. 260, does not deal with the subject here involved. In that case the witness was testifying with regard to value and admitted, as all witnesses testifying on value necessarily must do, that he had previously consulted various records before reaching an opinion on the subject. The error assigned was not the refusal to produce the documents but the refusal to strike the testimony of the witness. The Circuit Court of Appeals in upholding the action of the lower Court did not at all discuss the general proposition here involved. Likewise in *Mullaney* v. *United States*, 82 F. 2nd 638, there was no discussion of the principles involved. It is true that in the *Lennon* case, 20 F. 2nd 490, there was some, though meagre, discussion of the legal principles. The Circuit Court rested its conclusion largely upon certain State cases which it claimed supported its view. It is submitted that in that respect the Circuit Court of Appeals was in error.

An examination of each of those cases shows that the problem here presented was not considered. Thus in *Wabash, etc. Canal* v. *Bledsoe*, 5 Ind. 133, *Davenport* v. *McKee*, 94 No. Car. 325, *State* v. *Collins*, 15 So. Car. 373, *Hamilton* v. *Rice*, 15 Tex. 382 and *State* v. *Magers*, 36 Ore. 38, the question was not whether cross-examining counsel had the right to have the memorandum produced for his

inspection, but whether the testimony of the witness could be received in the absence of the memorandum. In the last of these cases the Court made this distinction plain, indicating that had request for the production of the memorandum been made, it might have been complied with and made use of in cross-examination. In *Tibbetts v. Sternberg*, 66 Barb. (N. Y.) 201, the question in the case at bar did not arise. The Court merely held that a paper used by a witness for the purpose of refreshing his recollection must be produced. There is, to be sure, a dictum to the effect that it must appear that the witness is using a paper as an aid to his testimony before he can be required to produce it. But that remark was not directed towards papers used by the witness before taking the witness stand, but with regard to papers which the witness might have in his possession while on the witness stand and which yet were not used by him in connection with his testimony.

It is submitted that the view expressed by Wigmore and the Rhode Island Court is the better view and that no sound reason exists for distinguishing between cases in which a memorandum used by a witness for the purpose of refreshing his recollection was used by him just before he went on the stand and those where he referred to the memorandum while he was on the stand. Whenever a witness admits that he had to refresh his recollection by reference to a memorandum, it is essential, in the interests of truth, that cross-examining counsel should have the right to determine whether that memorandum is what it is represented to be and whether it contains matter not referred to by the witness which might be helpful to the cross-examiner. Particularly should that be the case when, as here, the witnesses were government agents and the memoranda were actually in court. A vital right of defendants was, therefore, denied them for which the judgment must be reversed.

Conclusion.

It is respectfully submitted that the convictions should be reversed because of the violation of the constitutional rights of petitioners, the reception in evidence of telephone conversations intercepted in violation of the Communications Act, and the refusal of the Trial Court to permit counsel for defendants to inspect memoranda relied upon by government witnesses to refresh their recollections.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

Nos. 962, 963, 980.

(OCTOBER TERM, 1940.)

MARTIN M. GOLDMAN, JACOB P. SHULMAN and THEODORE GOLDMAN,

Petitioners,

against

UNITED STATES OF AMERICA.

REPLY BRIEF ON BEHALF OF PETITIONERS.

JEREMIAH T. MAHONEY,
Attorney for Petitioner,
Jacob P. Shulman.

JACOB W. FRIEDMAN,
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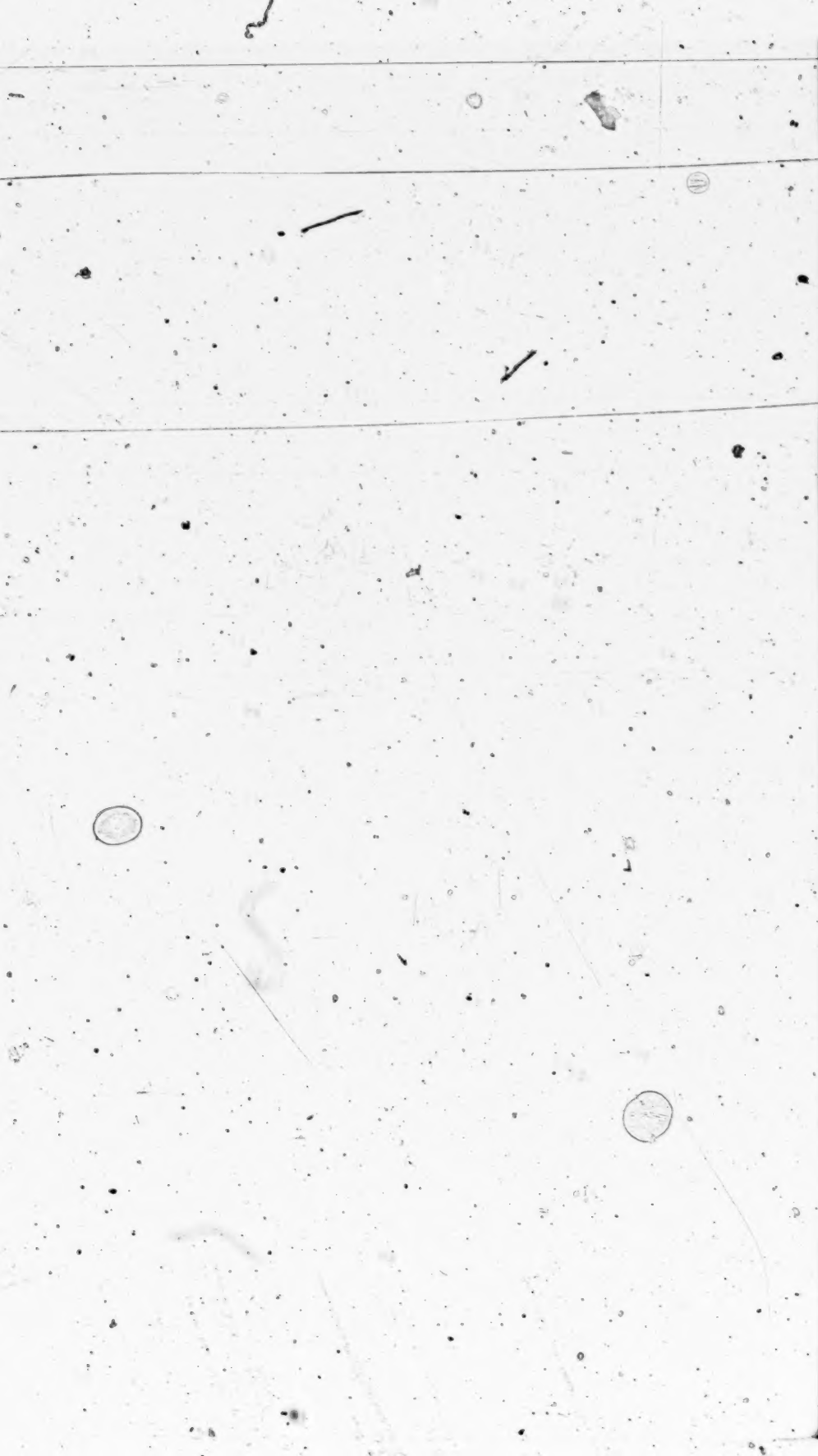

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Supreme Court of the United States

OCTOBER TERM, 1941.

Nos. 962, 963, 980.

(OCTOBER TERM, 1940.)

MARTIN M. GOLDMAN, JACOB P. SHULMAN and THEODORE GOLDMAN,
Petitioners,
against
UNITED STATES OF AMERICA.

REPLY BRIEF ON BEHALF OF PETITIONERS.

The Government observes (p. 5) that petitioners do not challenge the sufficiency of the evidence supporting the conviction. This is hardly a fair statement. Petitioners have consistently asserted their innocence and will continue to do so in whatever forum such contention may be available. The Government itself recognizes (brief in opposition to certiorari) with respect to Martin Goldman that "the portions of his conversations overheard contained nothing incriminating" while "Theodore Goldman did not participate in any of the conversations overheard" (p. 10). Had this Court jurisdiction to review the weight of evidence, we are confident we could demonstrate the factual injustice of the conviction. Even the Circuit Court of Appeals (R. 1094) could say no more than that it was "for the

jury to decide whether the appellants had acted in good faith". As for Hoffman's testimony, that Court noted, "we must now take it for granted that it was believed by the jury." The irresponsive answers of that vindicative witness (R. 291), consisting of rankest hearsay, constitute the sole foundation for the reference to other alleged complaints against these defendants, and yet the Government's brief alludes to these matters (p. 7) in its narrative of the proceedings. The case is therefore not one of guilty defendants who invoke a constitutional shield, but rather a situation wherein individuals unjustly accused seek a hearing in accordance with law.

We shall now concern ourselves with the principal question of this case: the application of the Fourth Amendment.

1. The Government argues (p. 24) that petitioners' contention cannot be accepted without overruling the *Olmstead* case, 277 U. S. 438, since that case held that the Fourth Amendment did not apply unless there was the seizure of a tangible object. We do not believe that it is necessary to overrule the *Olmstead* case in order to support the position of petitioners. While it is true that the opinion of Chief Justice Taft discussed the meaning of "seizure", the decision can be supported without reference to that discussion. For, as noted in our main brief (p. 17), the decision also rested on the fact that telephone wires are projected beyond the area which is the subject of constitutional protection.

2. But, if this distinction of the *Olmstead* case be not acceptable, we submit that a reconsideration of the basic principles involved should lead to a rejection of that decision. The applicable arguments were so fully stated in the dissenting opinions of Justices Brandeis and Butler in that

case that repetition here would have little value. Nor does the brief of the Government in the case at bar add many considerations requiring extended discussion. It is true, as the Government states (p. 24), that the Fourth Amendment was formulated because of experience with certain kinds of governmental activities and that wiretapping and detectaphones are not within the literal scope of the prohibition contained in the Amendment. But there can be no doubt that they are within the effective purpose of the Amendment.

The Government (p. 33) challenges petitioners to find a logical, as distinct from an emotional, basis for differentiation between the use of the detectaphone and the use of feigned accomplices. We believe that we have already done so in our main brief, where we pointed out (p. 18) that the constitutional protection does not extend to situations in which the citizen has not safeguarded his own privacy. If one person holds indiscreet conversations with another he runs the risk of that other turning out to be a spy or informer and cannot complain of the violation of his constitutional rights. So with the person hidden in a closet, or under a table (see brief p. 32); that one does not ordinarily look for persons so hidden is not the point—with reasonable diligence one can. But no ordinary diligence will discover a secreted dictograph or detectaphone installed in an adjoining room or office.

In this connection it is important to bear in mind that while the extent of the constitutional protection is ordinarily tested in criminal cases the protection exists for all citizens—to safeguard them against oppression and possible blackmail. If the Constitution is weakened on the basis of a supposed "war against criminals" (*Sorrels* v. *United States*, 287 U. S. 435, 453, quoted by Government p. 32), it will lose its force for the people as a whole. No such consequence is necessary to permit prose-

cution for crime. For, as the Government itself recognizes (p. 42), the Fourth Amendment does not bar all invasions of privacy, but only those deemed "unreasonable."

And, since only "unreasonable" invasions are prohibited, the Congress retains power to prescribe the conditions under which reasonable wiretapping might be permitted, or the use of a detectaphone also. Congress might well adopt the New York provision (Const. Art. 1, §12) under which wiretapping may be authorized by a judge, on a showing of probable cause. There can be little doubt that, by analogy to the search warrant, this Court would hold such act to be reasonable. It might even, following the reasoning of the *Carroll* case, 267 U. S. 132, uphold wiretapping without a court order where the exigencies of the particular case prevented previous application to judicial authority. There is no basis, therefore, for the argument (p. 42) that a rejection of the *Olmstead* case by this Court would leave the Congress entirely powerless to authorize wiretapping or the use of detectaphones in cases involving espionage or sabotage.

Moreover, the apprehension voiced that the practices here debated are justifiable on the ground that the very security of the nation may be undermined by undetected acts of espionage and sabotage would appear to be illusory. While detectaphones have not yet been the subject of extensive judicial examination, a persuasive analogy is afforded by the cognate practice of wiretapping. We have submitted in an Appendix a survey, believed to be exhaustive, of all reported cases in the Federal courts in the past twenty-five years involving wiretapping. This shows not a single case of espionage or sabotage.

Moreover, the Congress has shown no concern on this subject since it has repeatedly refused to accede to requests of the Department of Justice that wiretapping be

authorized in certain classes of cases.* Since the subject of Congressional interest in this subject has been so fully covered in the brief of Representative Eliot, there is no need of our elaborating this phase of the subject further.

The Government (p. 42) suggests that a decision in favor of petitioners would prevent a military officer from intercepting a radio communication between a suspected spy and the enemy. But that simply is not so. In the first place there is a vast difference between communications by radio, which are of necessity under Government license and control, and communications between persons in the privacy of their homes or offices. Moreover, to the extent that radio interception is not now entirely forbidden by the Communications Act, interception might be justified where probable cause could be shown and the circumstances of the particular situation required immediate action.** Where, however, the time element did not make such action imperative, interception should certainly not be permitted to the civil authorities without Congressional action providing for judicial supervision, as already indicated. And there is no reason to suppose that the decision of the Court in this criminal case will determine military actions.

Thus, to uphold the position of petitioners will not cripple the Government in its fight against crime, but will ensure that in the carrying out of that struggle the agencies of Government will not have unrestricted latitude. Within well established bounds, officers of the law can pursue the criminal even if his privacy be thus invaded,

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* In addition to the reference on page 21 of our original brief, we call the Court's attention to S. 3756, 75th Congress, 3rd Session 1938; H. J. Resolution 571, 76th Congress, 3rd Session 1940.

** Moreover, cable or radio messages sent through ordinary channels are available under Grand Jury or other subpoena (See §605 of Communications Act).

but even the suspected criminal should be protected from uncontrolled police espionage. We come then to the question, was the action of the Government agents in the case at bar "reasonable" and thus entirely outside the scope of the Fourth Amendment?

3. The Government bases its argument for reasonableness (p. 43) primarily on the circumstance that the invasion of privacy was based on probable cause and that, in the main, the matter overheard, could be described as consisting of the instrumentalities of crime. But these elements alone are not enough. This is well settled in the law of search and seizure, to which we must look for definitions of reasonableness. True, without probable cause, no search is ever valid, and (except perhaps in the case of a seizure at the time of arrest) only the instrumentalities of crime, not the mere evidence of it, may be taken. But these are elements as applicable to search with a warrant (where the question of reasonableness really has no application) as to a search without a warrant, which is the situation with which we are here concerned.

For, *prima facie* at least, all searches without warrant are unreasonable. The existence of the two chief exceptions to that rule (search upon arrest and search of a moving vehicle) make this clear. In upholding a search of a moving automobile (*Carroll* v. *United States*, *supra*), this Court indicated that the failure to obtain a warrant can be excused only by the urgent necessities of the situation. Probable cause must, of course, exist alike when the search is made without, as with, a warrant. But that this alone is not enough was stated by Chief Justice Taft in the *Carroll* case, at page 156:

> "In cases where the securing of a warrant is reasonably practical, it must be used."

That this is the real basis of the application of the rule of reasonableness is evident from *Agnello* v. *United States*, 269 U. S. 20. There a search without warrant was held unconstitutional, though based on probable cause, because the circumstances permitted an application for a warrant. Mr. Justice Butler expressly pointed out, citing many cases, that search without warrant of a dwelling house has always been held unlawful "notwithstanding facts unquestionably showing probable cause" (p. 33). The Government cites (p. 28) the *Hester* case, 265 U. S. 57, as though it were authority for upholding a search without warrant merely because there was probable cause. That is not a correct understanding of that case, which rested not at all on the existence of probable cause, but solely on the fact that the premises "searched", being open fields, were not covered by the Fourth Amendment at all.

In the case at bar it is clear that no urgency for immediate action existed which would have authorized action without judicial approval had an orthodox search been the object of the agents' activities.

Nor can it be argued (as is attempted by the Government p. 44) that these considerations cannot apply here because the Congress has set up no machinery for obtaining warrants or analogous orders for the use of detectaphones. The scope of a constitutional protection surely cannot be narrower because of Congressional inaction than it would be if the Congress had acted. The Congress can add to the protection of the individual by imposing restrictions on Government agents beyond those contained in the Constitution; it cannot limit such protection either by action or inaction. The only proper consequence, therefore, of Congressional inaction must be that the use of a detectaphone is barred, except perhaps in those exceptional circumstances in which prior judicial sanction has never been thought necessary even in the

case of searches. Clearly such would be the case with regard to a conventional search had Congress never authorized search warrants; the same result must follow with regard to detectaphones. That Congressional inaction may have been inadvertent rather than deliberate is of no consequence. For the future Congress can correct any lack if it so desires, but past action cannot be given validity merely because had machinery existed valid action might have been taken. Especially must this be so, since the books are full of instances in which Government agents have disregarded the statutory provisions dealing with search warrants and have acted without the prior sanction which alone could validate their acts.

It is submitted, therefore, that there is no basis for holding the action of the Government agents reasonable within any definition heretofore given that term in search and seizure cases.

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4. Finally, it is suggested by the Government (p. 50) that whatever may be the case with regard to petitioner Shulman, the situation of the Goldmans is different because the invasion of privacy did not affect them. Passing the point that petitioner Martin Goldman was directly affected because his conversations were overheard, we challenge the basis on which the Government's contention rests. We believe that this Court's decision in the *Weiss* case, 308 U. S. 321, requires the conclusion that where evidence has been illegally received against one of several defendants in a conspiracy case the ends of justice require a new trial for all the defendants so that their guilt may be determined without the improper evidence being before the jury at all.

The fundamental questions involved in this phase of the case have been extensively argued in the case of

Goldstein v. *United States*, No. 256 of this Term, in the brief of petitioner Schwarz at pp. 11-13. We respectfully refer to that discussion and incorporate it herein.

In considering the consequences of an adjudication that the use of a detectaphone is constitutionally permissible, the Court may appropriately examine the effect of such decision upon that whole group of communications which both common law and statute have traditionally classed as privileged. The characteristic and most litigated one is that obtaining between attorney and client, although the applicable principles do not differ in the cases of confidential transactions with spiritual advisers, physicians, spouses or Government officials (*inter se*). Should the decision under consideration be upheld, any one might secretly affix a detectaphone to the exterior wall of a home or office (including an attorney's office), make a record of a supposedly confidential conversation and testify freely to whatever was thus learned. The power to disclose springs from the basic rule that an individual covertly overhearing a conversation between an attorney and client is permitted to testify as to its contents. This is the established law in every jurisdiction where the question has arisen (70 Corpus Juris 435; Jones on Evidence, 3d Ed., p. 1156). The holding now *sub judice* approves the use of a relatively new scientific device which will give outsiders a further effective means of ascertaining those communications whose confidential character it has generally been deemed so important to preserve—merely because of the ancillary rule that declines to cloak with the privilege the fruits of surreptitious cognizance.

Conclusion.

We respectively submit that the convictions should be reversed.

Respectfully submitted,

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APPENDIX.

TABULATION OF WIRETAPPING CASES:

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Kerns v. *United States*, 50 F. (2d) 602 (C. C. A. 6th, 1931) (violation of National Prohibition Act);

United States v. *Klee*, 101 F. (2d) 191 (C. C. A. 3d, 1938) (violation of Internal Revenue Law in respect to liquor);

Morton v. *United States*, 60 F. (2d) 696 (C. C. A. 7th, 1932) (violation of Volstead Act)

Nardone v. *United States*, 302 U. S. 379 (1937) and 308 U. S. 338 (1939) (violation of Internal Revenue Law pertaining to liquor);

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United States v. *Pillon*, 36 F. Supp. 567 (E. D. N. Y., 1941) (violation of conspiracy law);

United States v. *Plisco*, 22 F. Supp. 242 (D., D. C., 1938) (violation of gambling laws);

United States v. *Reed*, 96 F. (2d) 785 (C. C. A. 2d, 1938) (violation of White Slave Traffic Act);

Sablowsky v. *United States*, 101 F. (2d) 183 (C. C. A. 3d, 1938) (violation of Internal Revenue Laws pertaining to liquor);

United States v. *Seeman*, 115 F. (2d) 371 (C. C. A. 2d, 1941) (transportation of stolen treasury notes);

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Weiss v. *United States*, 308 U. S. 321 (1939) (use of the mails to defraud);

United States v. *Ying Ping Jong*, 26 F. Supp. 69 (D. C. Pa., 1939) (violation of narcotics law).

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 1089–1096) is reported in 118 F. (2d) 310.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 26, 1941 (R. 1104). Petitions for writs of certiorari were filed on behalf of Martin M. Goldman and Jacob P. Shulman on April 18, 1941, and on behalf of Theodore Goldman on April 23, 1941; all the petitions were denied on June 2, 1941. On October 20, 1941, this Court granted a petition for rehearing filed on August 21, 1941, vacated its order denying the petitions for writs of certiorari, and granted the petitions (R. 1107–1108). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of Rules of Practice and Procedure in Criminal Cases, promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether any evidence against petitioners was obtained by means of a trespass or unlawful entry.

2. Whether evidence obtained by eavesdropping upon conversations in an adjoining room by means of a "detectaphone"—a listening device which amplifies sound vibrations coming through the wall—should be excluded in the federal courts, on the ground that such eavesdropping constitutes an unreasonable search prohibited by the Fourth Amendment.

3. Whether such evidence, even if inadmissible against the lawful tenant of the room in which the

conversations occurred, is admissible against his two co-conspirators, neither of whom had any possessory interest in the room and only one of whom participated in any of the conversations which were overheard.

4. Whether overhearing one end of a telephone conversation in an adjoining room by means of a detectaphone constitutes an interception of a communication prohibited by Section 605 of the Federal Communications Act.

5. Whether petitioners were entitled to inspect official memoranda prepared by federal agents who refreshed their recollections therefrom before being sworn as witnesses.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the Constitution of the United States provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Section 605 of the Federal Communications Act of June 19, 1934, 48 Stat. 1064, 1103 (U. S. C., Title 47, Sec. 605), provides in part as follows:

> No person receiving or assisting in receiving, or transmitting, or assisting in

transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof * * * and no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; * * * and no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto * * *.

STATEMENT

Petitioners and one Kandell were indicted on February 1, 1940 (R. 9), in the United States District Court for the Southern District of New York for conspiracy to violate 11 U. S. C., Section 52 (b) (5). The indictment, which was in one count, charged in part that the defendants conspired to file a petition in bankruptcy and to cause it to be dismissed in consideration of fraudulently receiving a sum of approximately $400 from one Robert Hoffman and others (R. 3–7). The indictment was dismissed as to Kandell at

the close of the Government's case (R. 531). The petitioners were convicted on July 26, 1940 (R. 943), and each of them received a prison sentence of eighteen months and a fine of $25 (R. 14, 16, 18). The convictions were affirmed by the Circuit Court of Appeals for the Second Circuit (R. 1104).

The evidence supporting the convictions, the sufficiency of which petitioners do not challenge, may be summarized as follows:

On March 22, 1937, Paul Hymovitz, owner of a dry-goods store, executed a general assignment for the benefit of his creditors (Govt. Ex. 1, R. 955–959) to Samuel Kolman, an associate of Robert Hoffman, an attorney who had been retained by Hymovitz's relatives to liquidate the business (R. 177–178, 968, Govt. Ex. 2b). The assignee procured a court order permitting him to sell Hymovitz's goods at auction, and proceeded to hire the auctioneer (R. 996, Govt. Ex. 5c) and advise the creditors of the proposed sale (R. 993, Govt. Ex. 5). Petitioner Martin Goldman, counsel for certain creditors, at the occasion of a creditors' meeting took Hoffman aside and proposed to him that the assets of Hymovitz be sold in bulk for a sum sufficient to allow for a 40% settlement with creditors, payment of necessary expenses, and in addition $400 to be secretly divided among those actively participating in the scheme (R. 193–194, 201–202, 207–212). The plan contemplated an arrangement with the buyer which would keep the creditors in ignorance of

the true sale price of the goods (R. 193). Goldman explained that Kandell, an officer of the Dry Goods and Furnishings Association, who represented one of the creditors at the creditors' meeting (R. 187–188, 803), would "handle" the absent creditors and that those creditors present at the meeting would get ten dollars each to "shut their mouths" (R. 194).

Hoffman refused to join in this plan (R. 194). Thereafter, on April 3, 1937, petitioner Shulman, an attorney representing some of the creditors, filed an involuntary bankruptcy petition, the allegations of which were so indefinite that it could be dismissed for insufficiency without notice to creditors in case Hoffman should change his mind (R. 196, 202, Govt. Ex. 3, R. 978). A stay of the assignee's auction sale was obtained *ex parte* and was served upon Hoffman on the morning for which the sale was scheduled (R. 198, Govt. Ex. 3, R. 980). On April 5, after a hearing on the stay order at which the judge refused to vacate it (R. 200), Hoffman had a conference with Shulman in the latter's office (R. 201). Shulman inquired whether Hoffman was willing to do business along the lines previously outlined by petitioner Martin Goldman, that is, that the goods were to be sold in bulk to a private purchaser, that the creditors were to receive a settlement amounting to less than the net purchase price, after payment of necessary expenses, and that the remaining undisclosed portion of the purchase price was to be divided among Hoff-

man, Shulman, and Goldman (R. 201–202). Only if Hoffman consented to the deal, Shulman explained, would the petition in bankruptcy be dismissed (R. 202). Hoffman acquiesced and then went directly to the referee in bankruptcy and disclosed the scheme (R. 202). The referee informed Hoffman that "there had been many complaints made about these same defendants" (R. 291), and called in a representative of the Federal Bureau of Investigation, to whom Hoffman exposed petitioners' plan. Thereafter Hoffman, acting under instructions of the Bureau, continued to feign his willingness to enter into the conspiracy (R. 291).

After several conferences, Shulman and Hoffman arrived at an apparent understanding as to the bulk sale. Hoffman prepared a bill of sale in blank (R. 214) in which, at Shulman's suggestion, a fictitious name was inserted as purchaser in lieu of the name of the true prospective purchaser (R. 214, 454). Petitioner Theodore Goldman, a brother and partner of Martin Goldman, who was to receive a part of Martin Goldman's share (R. 211, 740, 836–840), then prepared and, on April 26, sent to Hoffman the papers necessary to dismiss the petition in bankruptcy (R. 219–220), which was dismissed on May 14, 1937 (Govt. Ex. 3, R. 988). The successful culmination of the petitioners' plan, however, was frustrated by the refusal of a creditor to release in full for the percentage offered (R. 223, 319–323).

Meanwhile, on the night of April 6, 1937, two agents of the Federal Bureau of Investigation, Turner and Ransom, went to the office building where petitioner Shulman maintained his office, in order to install a device to overhear a conference among Hoffman and some of the petitioners scheduled for the following afternoon (R. 303). With the consent and assistance of the building superintendent, but without the knowledge of Shulman, the agents obtained access to Shulman's office, Room 1509, and to the adjoining office, Room 1508, which was unoccupied (R. 45–46, 53, 56–57, 88). There was a small opening for a steam pipe at the base of the wall between the two offices. Through the space between the pipe and the edge of the aperture the agents passed a wire from Room 1508 into Room 1509, far enough to attach a small disc-shaped carbon microphone. The microphone was then drawn back into the hole until it was about an inch inside the wallpaper surface of Shulman's office (R. 87–89). In Room 1508 the wire was attached to an amplifier and headphones. The agents tested the installation and, finding it satisfactory, disconnected the amplifier and earphones and departed, leaving only the microphone in the wall with a small piece of wire leading into Room 1508 (R. 86–87, 90, 96–97).

The following afternoon, Turner returned to Room 1508 accompanied by agents Schroeder and Rubenstein and a stenographer. They brought with them the amplifier and earphones, which were

once more connected with the carbon microphone (R. 100). They also installed another and wholly different listening device known as a detectaphone. This instrument, consisting of a delicate needle which contacts a crystal microphone connected to an amplifier, is more sensitive than a carbon microphone (R. 94, 98). The needle, upon contact with a wall, is activated by sound waves penetrating the wall from the adjoining room, without the aid of a wire or opening leading into that room (R. 94). The detectaphone is equipped with its own amplifier as well as earphones (R. 101, 104).

As we show in more detail in Point I of the Argument, the location of the detectaphone on the wall was determined by a process of trial and error and not by the knowledge which agent Turner had secured the night before of the lay-out of Shulman's office. Schroeder moved the detectaphone over the wall experimentally until he ascertained the most advantageous position for listening (R. 113–117, 119–120). It was discovered that the carbon microphone in the wall, probably because the steam was now turned on in the pipe, yielded nothing intelligible, and this apparatus was dismantled (R. 98, 102, 105–106, 119–123, 152, 160–161).

Employing only the detectaphone on the wall in Room 1508, the agents overheard, and the stenographer transcribed, the audible portions of Hoffman's conference in Room 1509 with Shulman that afternoon as well as succeeding conferences on

April 14, 21, and 26 (Govt. Exs. 18-a, 19-a, 20-a, 21-a; R. 383–453, 302, 372–373).

Petitioner Martin Goldman attended only the conference on April 7 (R. 390–405). Petitioner Theodore Goldman did not participate in any of the conversations overheard.

Before the trial, Shulman filed a motion to suppress alleged illegally obtained evidence (R. 20–27). A preliminary hearing was held and at its conclusion the trial court found as facts that no evidence had been obtained from the carbon microphone which was installed pursuant to the trespass in Shulman's office, and that the unlawful entry for the purpose of installing the carbon microphone did not facilitate the installation or use of the detectaphone. The court concluded that the evidence acquired through use of the detectaphone was not obtained in violation of the Fourth Amendment or of Section 605 of the Federal Communications Act (R. 164–168). It accordingly denied the motion to suppress (*ibid.*).

At the trial the court permitted the stenographer who had transcribed the conversations overheard by means of the detectaphone to read the transcripts thereof in evidence (R. 382–451). These transcripts corroborated the testimony of Hoffman and were, in turn, corroborated by Turner and one of the other government agents who had listened in on the conversations.

Both at the preliminary hearing and at the trial, defense counsel claimed the right to inspect

notes and memoranda made by the agents in the course of their investigation and to require the production of such papers from the files of the Federal Bureau of Investigation (R. 107, 108, 125, 156, 471, 482). It appeared that the agents had reviewed these notes and memoranda before testifying (R. 106, 132). The trial court noted that the memoranda were confidential communications among the investigating officers of the Government (R. 477–478), and ruled that counsel were not entitled to inspect them since they were not used by the witnesses to refresh their recollection while on the stand (R. 128–129, 470–472, 475, 482–485). Moreover, the court, after examination of the controverted documents, declared at the preliminary hearing that they embraced material which the Government should not be required to disclose to the defense in advance of the trial and which bore no relation to the legality of the investigating methods used (R. 109–111, 127).

SUMMARY OF ARGUMENT

I

Evidence of the conversations heard by means of the detectaphone was not inadmissible on the ground that it was obtained as a result of an unconstitutional trespass. The courts below found, and the evidence shows, that the installation and use of the detectaphone were not aided by the previous unlawful entry into Shulman's office.

II

Petitioners' rights under the Fourth Amendment were not violated by the use of the detectaphone. Invasion of an individual's privacy, however distasteful, is not *per se* repugnant to the Fourth Amendment; many such invasions are sanctioned. Invasions of the type here involved should be judged on broad grounds of choice between conflicting *desiderata*. The choice is essentially one to be made by the legislative or the executive branch of the Government, and should not be removed from the realm of regulation by all-embracing constitutional interdict.

A. For constitutional purposes, the use of a detectaphone is not distinguishable from wire-tapping. The instant case, therefore, is controlled by *Olmstead* v. *United States*, 277 U. S. 438, and, accordingly, no "search" within the meaning of the Fourth Amendment is involved.

B. The *Olmstead* case was correctly decided and its doctrine should be reaffirmed. The language of the Fourth Amendment relates only to searches and seizures of tangibles and to physical invasions of places or persons. While the Amendment should, of course, be liberally construed in order to achieve its purpose, this does not justify going beyond its purpose by reading into its unusually specific terms a sweeping guaranty of the right of privacy. For to do so would not be to construe but to amend the Constitution in order to achieve a

result the wisdom of which involves the exercise of a delicate political judgment. The right to be let alone must, and always has been, qualified in the light of equally important considerations relating to the power of the Government to protect itself and its citizens from enemies and wrongdoers. Where, as here, the invasion of privacy is simply by aural observation, the considerations of public enforcement should continue to prevail and the invasion should not be regarded as a "search."

The power to employ devices such as the detectaphone and wire-tapping concededly is open to abuse. But this fact is an argument for executive control or regulatory legislation, not for sweeping constitutional prohibition.

C. Even if the *Olmstead* case be overruled and the use of the detectaphone be regarded as a "search," it was not an "unreasonable" search within the meaning of the Fourth Amendment. The general rules relating to warrants cannot be assimilated to a "search" such as the method here involved. The prescribed warrant procedure has application only to search for tangibles, and a detectaphone has no utility in the course of an arrest. The constitutional issue, therefore, must be whether, in all the circumstances, this was an "unreasonable search." If the concept of "search" is extended, the concept of "unreasonableness" must be adjusted accordingly. The adjustment should properly include within the per-

missible constitutional scope the use of a detectaphone to detect criminal activities. Particularly is the use reasonable here since the "search" not only was upon probable cause to believe that a crime was being committed but was also directed to the particular conversations which constituted the "instruments" of the crime.

D. Even if the use of the detectaphone be held to be an unreasonable search as to petitioner Shulman, in whose office the conversations were held, no constitutional rights of petitioners Theodore and Martin Goldman were violated and they are without standing to complain that the evidence obtained was inadmissible against them. Theodore Goldman did not even participate in any of the conversations which were overheard.

III

The fact that the F. B. I. agents, by use of the detectaphone, overheard Shulman talking into a telephone does not constitute a violation of Section 605 of the Communications Act. The conversations so heard were not "wire communications" and the eavesdropping did not constitute "interception" within the meaning of the Act.

IV

The trial court committed no error in denying petitioners the right to inspect confidential memoranda prepared by the government agents from

which the agents refreshed their recollections before being sworn as witnesses. The established federal rule is that inspection of memoranda may be compelled only where the witness uses the paper in the course of his testimony. In any event, the trial court's ruling was correct on the independent ground that the memoranda demanded were privileged official documents.

ARGUMENT

I

NO EVIDENCE AGAINST PETITIONERS WAS OBTAINED BY MEANS OF A TRESPASS OR UNLAWFUL ENTRY

Petitioners contend that the conversations overheard through the detectaphone should have been excluded under the rule enunciated in *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385, to the effect that evidence obtained by means of an unconstitutional trespass is inadmissible (Br. 9–13). In order to invoke this rule, however, petitioners must show that the overhearing of the conversations by use of the detectaphone resulted, in part at least, from the agents' unlawful entry into Shulman's office on the previous day to install the carbon microphone. They attempt to do this by asserting that the knowledge of the lay-out of Shulman's office, obtained by the unlawful entry, "was bound to be of help" in determining where the detectaphone should be placed (Br. 11).

The assertion is contrary to the concurrent findings of the courts below, amply supported by evidence, that the installation and use of the detectaphone were not aided by the previous trespass (R. 165, 166, 1095). This issue is, of course, one for the trial court and its finding, concurred in by the Circuit Court of Appeals, must be accepted by this Court unless clear error is shown. *Just* v. *Chambers*, 312 U. S. 383, 385; *United States* v. *O'Donnell*, 303 U. S. 501; *Alabama Power Co.* v. *Ickes*, 302 U. S. 464.

The trial court's determination of the issue was plainly justified, if it was not compelled, by the evidence. Agent Schroeder, who installed the detectaphone without ever having been in Shulman's office, testified that he found the most desirable location for the detectaphone by "moving it around the wall until I found a spot where the sounds then going on in the adjoining room would be most advantageously heard" (R. 101). He was corroborated by Agent Turner who witnessed his experiments (R. 119–120). On cross-examination, Schroeder stated that he was helped "somewhat" by the fact that Turner, who had been in Shulman's office the night before, knew "Shulman's office layout" (R. 103); neither agent, however, recalled discussing the arrangement of Shulman's rooms with the other (R. 115–116, 122), and on redirect examination Schroeder testified unequivocally that the installation was accomplished solely by experimen-

tation (R. 116–117). Indeed, the testimony is clear that Schroeder not only received no information as to the lay-out of Shulman's office before installing the detectaphone (R. 112, 116), but that such advice would have been an unwelcome hindrance to the exercise of his own independent judgment (R. 116), because the proper location for a detectaphone can be determined only by taking into account such physical factors as the construction of the wall, its thickness, and the presence of beams or steel structure (R. 95–96, 120). And petitioners' suggestion that a knowledge of Shulman's office arrangements must have saved time in the installation of the detectaphone (Br. 11) is refuted by Schroeder's testimony that he experimented "for about an hour or so" before deciding to use it (R. 102).

Furthermore, even if we assumed, contrary to the finding of the District Court, that knowledge of the lay-out of Shulman's office obtained by the trespass did aid Schroeder in finding the proper location for the detectaphone, this aid was plainly so incidental, and had such an insubstantial relation to the procurement of the evidence, that it must be disregarded. See *Silverthorne Lumber Co.* v. *United States,* 251 U. S. 385, 392; *Nardone* v. *United States,* 308 U. S. 338, 341.

Accordingly, since the evidence in question was not obtained as a result of any trespass into Shulman's office but entirely by lawful entry into the

adjoining room, there was no basis for exclusion of the conversations under the rule of *Silverthorne Lumber Co.* v. *United States, supra.*

II

THE USE OF THE DETECTAPHONE DID NOT VIOLATE PETITIONERS' RIGHTS UNDER THE FOURTH AMENDMENT

Petitioners' second contention is that the use of the detectaphone, even though not involving a physical trespass, constitutes a violation of the Fourth Amendment and that consequently the conversations overheard through such use should have been excluded from evidence (Br. 14–22).[1] In their petitions for writs of certiorari, petitioners

[1] Petitioners have abandoned the contention, made below, that the evidence complained of was inadmissible because the use of the detectaphone violated the New York statute prohibiting eavesdropping, L. 1923, c. 642, Section 721 of the Penal Code of New York. That statute is on its face inapplicable to law enforcement officials: "Eavesdropping.—A person who secretly loiters about a building, with intent to overhear a discourse therein, and to repeat or publish the same to vex or annoy or injure others, is guilty of a misdemeanor." Cf. *People* v. *Hebberd*, 96 Misc. 617, 620–621 (N. Y. Sup. Ct.) holding the New York statute prohibiting wire-tapping inapplicable to police officers engaged in official duties (Consol. Laws, N. Y., c. 41, Sec. 1423, Par. 6). In any event, it is the settled rule in the federal courts that evidence is not inadmissible merely because it is illegally or unethically, as distinct from unconstitutionally, acquired. *Olmstead* v. *United States*, 277 U. S. 438, 466–467; cf. *McGuire* v. *United States*, 273 U. S. 95, 99; *United States* v. *Mandel*, 17 F. (2d) 270 (D. Mass.); *United States* v. *Marasco*, 266 Fed. 713 (S. D. N. Y.); 5 Jones, *Evidence* (2d ed.), Sec. 2075, p. 3.

conceded that this contention was contrary to *Olmstead* v. *United States*, 277 U. S. 438, and frankly predicated their argument upon the hope of overruling that case. In their petition for rehearing (pp. 12–13) and in their brief on the merits (p. 17), however, petitioners do not specifically challenge the correctness of the *Olmstead* case, but contend that it is distinguishable from the present case. Nevertheless, many of petitioners' arguments, as well as the arguments of *amici curiae*, present contentions totally at variance with the *Olmstead* decision.[2]

It is the position of the Government (1) that, under the doctrine of the *Olmstead* case, the use of a detectaphone does not constitute a "search" or "seizure" within the meaning of the Fourth Amendment; (2) that the *Olmstead* case was correctly decided; and (3) that even if the use of a detectaphone should be considered as a "search" or "seizure" within the meaning of the Fourth Amendment, no unconstitutional invasion of petitioners' rights occurred because the particular use

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[2] Petitioners do not argue that the introduction of the conversations violated their rights under the Fifth Amendment independently of any violation of the Fourth Amendment. As the Court held in the *Olmstead* case (p. 462), "There is no room in the present case for applying the Fifth Amendment unless the Fourth Amendment was first violated. There was no evidence of compulsion to induce the defendants to talk * * *." See also *Holt* v. *United States*, 218 U. S. 245, 252–253; cf. *Schenck* v. *United States*, 249 U. S. 47, 50; *Adams* v. *New York*, 192 U. S. 585, 598; *Burdeau* v. *McDowell*, 256 U. S. 465, 475, 476.

made of the device in this case was not "unreasonable" within the meaning of the Amendment.

We recognize, and indeed emphasize, that our position raises issues of fundamental importance both for the individual citizen and for the nation as a whole. The use of a detectaphone, like the related use of wire-tapping, constitutes an undeniable invasion of privacy—a thing distasteful to us both as individuals and as a people. But this distaste, while it may color, does not solve the constitutional issue. For there are many types of invasion of privacy—the use of stool pigeons, eavesdropping, keyhole-peeping and the like—which are equally distasteful and which are yet plainly beyond the prohibition of the Fourth Amendment.[3] And even the search of the home, the historical occasion for the Amendment, is itself not a violation of the Amendment provided only that a proper warrant be obtained. Yet the warrant procedure, while it may provide protection against abuse, specifically contemplates the invasion, under some circumstances, of the privacy of the particular individual whose home is involved.

Plainly, then, the Fourth Amendment is not a guaranty of privacy either against intrusions of all kinds or against intrusions of any kind under all circumstances. The fact, therefore, that the use of a detectaphone, like the use of wire-tap-

[3] See *Sorrells* v. *United States*, 287 U. S. 435, 453–454; *Agnello* v. *United States*, 269 U. S. 20; *United States* v. *Lee*, 274 U. S. 559; *Grimm* v. *United States*, 156 U. S. 604, 610.

ping or of a concealed eavesdropper, serves to reveal to the law enforcement officers conversations which the parties thereto intended to keep private, is not determinative of the constitutional issue. The question is rather whether the use of a detectaphone is the type of intrusion upon the sanctity of the home to which the Fourth Amendment was intended to apply and, if so, whether, under the circumstances of this case, the particular intrusion was "unreasonable" within the meaning of the Amendment.

That this question is one of utmost gravity to the Government needs no emphasis from us. It will, we think, be readily admitted that the use of scientific devices such as the detectaphone and wiretapping may be indispensable to the detection and prevention of crime; the argument against the use of such devices must therefore be that the *desideratum* of crime prevention is overriden by the *desideratum* of privacy for the individual. Yet recent events serve as a vivid reminder of the extent to which not only the safety of the local community but also the very security of the nation may be undermined by the undetected activities of those bent on evil to the community or the nation. The Court should be slow, we believe—particularly in the absence of clear constitutional direction—to accept any arguments, such as those made in this case, which entail the conclusion that the United States has voluntarily handicapped itself by con-

stitutional prohibition in dealing with such activities. We would deprecate as much as anyone the indiscriminate use of wire-tapping or of detectaphones. But we insist that their use is a matter for Congress or, in the absence of congressional action, for the Executive to regulate, and not a matter that has been put beyond the realm of regulation by all-embracing constitutional interdict.

A. THE PRESENT CASE IS CONTROLLED BY THE *OLMSTEAD* DECISION

In *Olmstead* v. *United States*, 277 U. S. 438, this Court held that evidence procured by tapping telephone wires leading from the offices and residences of the defendant conspirators was not obtained in violation of any rights guaranteed to the defendants by the Fourth Amendment. The Court pointed out that the prohibition against unreasonable searches and seizures contained in the Amendment is, in terms, limited to "material things—the person, the house, his papers or his effects" (277 U. S. at 464), and that therefore there must be "a seizure of his papers or his *tangible* material effects, or an actual *physical invasion* of his house 'or curtilage' for the purpose of making a seizure" (p. 466; italics supplied). This decision is clearly applicable to the present case, for if wire-tapping is not within the Fourth Amendment because it involves no physical invasion of the home or office and no actual seizure of tangible

papers or effects, the use of the detectaphone, which also involves no such invasion or seizure, is likewise beyond the scope of the constitutional prohibition.

Petitioners attempt to distinguish the two cases on the theory that a party to a telephone conversation runs "the risk that some one might overhear the conversation on that wire since his intention was to project his voice beyond the protection of his private premises", while petitioners in this case had "no intention of projecting their voices" beyond the walls of the room (Br. 17). The attempted distinction has no basis in reason or fact. The defendants in the *Olmstead* case no more intended to project their conversation over the telephone to the ears of government agents than petitioners did in the present case. And the risk was the same in each instance. The fact in both cases is that the energy which motivated the detecting instruments had traveled beyond the confines of the business office—in the *Olmstead* case by vibrations carried over a wire, in the present case by vibrations carried through the air or ether unaided by a wire, but amplified by a mechanism located beyond the limits of the office. The description by this Court of the situation in the *Olmstead* case is accordingly precisely applicable here: "There was no searching. There was no seizure. The evidence was secured by the use of the sense of hearing and that only. There was no

entry of the houses or offices of the defendants." (277 U. S. at 464.)

B. THE *OLMSTEAD* CASE WAS CORRECTLY DECIDED

Since the decision in the *Olmstead* case is applicable here, the evidence obtained through the use of the detectaphone was properly admitted against the petitioners unless, as petitioners imply and *amicus curiae* Congressman Eliot contends, the *Olmstead* case does not enunciate the correct constitutional principle. We submit, however, that the *Olmstead* decision is correct, that it is necessitated by the plain language of the Fourth Amendment, and that it is the only possible decision consonant with the historical purpose of the Amendment.

1. The historical background and original purpose of the Amendment are clear and well known. Reflecting acceptance of the ancient principle that "every man's home is his castle," the Amendment was designed to prevent the intolerable abuses which had resulted from the use of general warrants and writs of assistance in England and in the colonies and of *lettres de cachet* in France.* This

* *Boyd* v. *United States*, 116 U. S. 616; *O'Connor* v. *United States*, 281 Fed. 396, 397 (D. N. J.); *Annals of Congress*, Vol. I, Col. 434, 754; May, *Constitutional History of England*, Vol. II, p. 110 *et seq.*, p. 245 *et seq.*; Cooley, *Constitutional Limitations* (8th ed.), Vol. I, p. 612; Cornelius, *Search and Seizure* (2d ed., 1930), pp. 14–16; Harno, *Evidence Obtained by Illegal Search and Seizure*, 19 Ill. L. Rev. 303; Lasson, *The History and Development of the Fourth Amendment* (1937); Wood, *The Scope of the Constitutional Immunity Against Searches and Seizures*, 34 W. Va. L. Q. 1.

Court has not given the Amendment a technical construction but rather, in a long series of cases, has committed itself to the principle that the Amendment is "to be liberally construed to effect the purpose of the framers of the Constitution in the interest of liberty." *Olmstead* v. *United States*, 277 U. S. 438, 465. Accordingly, the Court has struck down as in violation of the Amendment every unwarranted attempt, in whatever guise, either physically to invade the home or office or to seize any tangible paper or effects.[5] And, in the interest of assuring compliance with the purpose and spirit of the Amendment, the Court has ruled that evidence obtained by an unlawful search and seizure is inadmissible in the federal courts,[6] even though the rule at common law with respect to the admissibility of evidence unlawfully obtained is otherwise.[7]

But although the language of the Amendment has been liberally construed in order to achieve its

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[5] *Ex parte Jackson*, 96 U. S. 727; *Boyd* v. *United States*, 116 U. S. 616; *Weeks* v. *United States*, 232 U. S. 383; *Silverthorne* v. *United States*, 251 U. S. 385; *Gouled* v. *United States*, 255 U. S. 298; *Amos* v. *United States*, 255 U. S. 313; *Agnello* v. *United States*, 269 U. S. 20.

[6] See *Boyd* v. *United States*, *supra*; *Weeks* v. *United States*, *supra*.

[7] *Commonwealth* v. *Dana*, 2 Metc. 329 (Mass. 1841); *People* v. *Mayen*, 188 Cal. 237, 251; *People* v. *Defore*, 242 N. Y. 13; Wigmore, *Evidence* (3d ed., 1940), Vol. 8, Section 2183; and see Wigmore, *Using Evidence Obtained by Illegal Search and Seizure*, 8 A. B. A. J. 479, where the American, English, and Canadian decisions are collected.

historical purpose, this Court has thus far refused—and we believe correctly—to read the specific terms of the Amendment, protecting the "right of the people to be secure in their *persons, houses, papers, and effects,* against unreasonable *searches and seizures*" [italics supplied] into a general guarantee of the "right to be let alone"—the right which Mr. Justice Brandeis believed that the Amendment should be construed to comprehend. See his dissenting opinion in *Olmstead* v. *United States, supra,* at 478. As the majority opinion in the *Olmstead* case pointed out (p. 466), not a single federal decision up to that time had held that there was an unreasonable search and seizure within the meaning of the Fourth Amendment unless there had been a physical invasion by force—or its equivalents, trickery or compulsion*—for the purpose of seizing tangible objects. And with the possible exception of *Nueslein* v. *District of Columbia,* 115 F. (2d) 690 (App. D. C.) we have been unable to find any case since that time which goes beyond these criteria, as petitioners suggest that this Court should now do.

It cannot be overemphasized that we are not dealing here with a broad and general constitutional guarantee such as due process of law, or freedom of speech and of the press, or the prohibition against cruel and unusual punishments, nor with broad regulatory powers, such as that conferring upon Congress the authority "To regulate

* E. g., *Boyd* v. *United States,* 116 U. S. 616; *Gouled* v. *United States,* 255 U. S. 298.

Commerce * * * among the several States". Rather we are dealing with a constitutional limitation upon the law enforcement powers of government which the framers of the Constitution saw fit to make unusually specific and which was adopted to deal with a specific evil. The framers could not have been unaware of the intrusion upon the "right to be let alone" which results from eavesdropping by law enforcement agents, or from the use of stool pigeons or informers—yet the prohibition of the Fourth Amendment was not directed against such methods of crime detection but only against the specific evil of searches and seizures, without proper warrant, of persons, houses, papers and effects. Other evils of kindred nature were left to be dealt with, as the occasion might require, by the government which the framers created.

We freely concede, as we have often insisted, that the Constitution is not to be read with the literal exactness with which a code of laws frequently must be read. The Constitution is a living document for all time and must therefore be liberally construed to achieve its purpose. But the purpose of the Fourth Amendment, as its history and its plain language show, is to protect against specific forms of abuse of the investigatory powers of government, and not to regulate that power generally.[9] To read the Amendment as containing a

[9] It should be noted that even in *Entick* v. *Carrington*, 19 Howell's St. Tr. 1029, 1066, from which the rule of immunity from invasion stems, Lord Camden observed that "the eye cannot be guilty of a trespass."

sweeping guarantee of the "right to be let alone," therefore, would not be a liberal construction designed to carry out the purpose of the framers, but rather judicial amendment of the Constitution to carry out a far more comprehensive purpose, the wisdom of which is a matter of delicate political judgment, involving a choice among sharply conflicting considerations—a choice not made by the framers except with respect to the particular problem with which they dealt. This Court, we submit, should be reluctant in any case so to enlarge the Constitution by judicial construction; it should be particularly reluctant to do so where, as here, the effect would be to place a serious limitation upon the power of government to protect its citizens against those who would rob, kidnap, or cheat them, or who would endanger the security of the nation.

2. This Court has not in the past been insensitive to the need to balance the "right to be let alone" against the public interest in effective enforcement of the laws. In *Hester* v. *United States*, 265 U. S. 57, in an opinion by Mr. Justice Holmes, the Court sustained the admissibility of evidence obtained by federal enforcement officials who, without a search warrant, trespassed upon a man's land in order to observe his activities, when there was reasonable ground to believe that the man was violating the law. In *Carroll* v. *United States*, 267 U. S. 132, this Court held that the Fourth Amendment did not forbid prohibition agents from

stopping a private passenger automobile proceeding along a public highway, in order to search for and seize liquor concealed in the upholstery, although the agents acted without warrant but upon reasonable belief that the automobile was being used for bootlegging. Mr. Justice Brandeis joined in the Court's decision in *Agnello* v. *United States*, 269 U. S. 20, where the arrests were made without warrant after the government agents, by looking through the windows into the house of one of the defendants, saw the defendants selling cocaine. See also *United States* v. *Feldman*, 104 F. (2d) 255 (C. C. A. 3), certiorari denied, 308 U. S. 579. Again, in *United States* v. *Lee*, 274 U. S. 559, this Court held that the use of a searchlight to observe activities in a small boat at sea was not a search within the meaning of the Fourth Amendment. The Court pointed out (p. 563) that the "use of the searchlight was comparable to the use of a marine glass or field glass" which "is not prohibited by the Constitution." Yet the use of the detectaphone is obviously only an aid to hearing as a searchlight, marine glass, or field glass is an aid to sight. All invade privacy equally and, at least where a field or marine glass is used, those whose conduct is observed are likely to be as unaware of the surveillance as when a detectaphone is used. Moreover, the element of secret observation was pres-

ent as fully in the *Agnello* case as in the *Olmstead* case."[10]

It is apparent, therefore, that purely sensory observation, or even "scientific" eavesdropping in which a mechanical instrument is used as an aid to the senses, does not constitute a "search" or "seizure" within the Amendment, for there is no physical invasion of house or office or person and no actual seizure of any paper or tangible effect.[11] The present case falls well within

[10] See also *United States* v. *Harnish*, 7 F. Supp. 305 (D. Me.). There government agents used a radio direction finder, a mechanical apparatus, to locate an outlaw radio station engaged in broadcasting signals to liquor-smuggling vessels. In rejecting the defendant's claim of violation of his rights under the Fourth Amendment, the court said (p. 307): "To be sure, they heard through a mechanical apparatus; but that simply gave them more accurate information than their ears alone could receive." See Note, 19 Minn. L. Rev. 468–469.

[11] An exhaustive search of the cases in the lower federal courts and in the state courts has failed to reveal a single case in which the use of mechanical instruments as an aid to the senses has been condemned, or in which evidence was excluded, in the absence of statute, on the ground that it was obtained by eavesdropping, with or without scientific aids. Cf. *Schoborg* v. *United States*, 264 Fed. 1 (C. C. A. 6), certiorari denied, 253 U. S. 494; *United States* v. *Weiss*, 34 F. Supp. 99, 101 (S. D. N. Y.); *People* v. *Cotta*, 49 Cal. 166; *State* v. *Allen and Carter*, 37 La. Ann. 685; *Goode* v. *State*, 158 Miss. 616; *Springer* v. *Byram*, 137 Ind. 15; *DeLore* v. *Smith*, 67 Ore. 304; *Commonwealth* v. *Wakelin*, 230 Mass. 567; *State* v. *Minneapolis Milk Co.*, 124 Minn. 34, 43; *Shields* v. *State*, 104 Ala. 35; *Cohen* v. *State*, 120 Tenn. 61; *Commonwealth* v. *Everson*, 123 Ky. 330; *Brindley* v. *State*, 193 Ala. 43; *Miller* v. *The People*, 70 Colo. 313; *State* v. *Center*,

this rule, for when the agents affixed the detectaphone to the wall of Room 1508, there was no greater intrusion legally upon petitioners' rights than if the agents had pressed their ears against the wall to overhear the conversations or had pressed their faces against the windows to peer inside. As the court below pointed out (R. 1095), "The situation was legally no different from the use of an amplifier of sound to overhear conversation not otherwise audible to the listener as, for instance, the use of a common aid to hearing by a person somewhat deaf."

Petitioners make the novel argument that the use of the detectaphone is more than mere eavesdropping because "eavesdropping connotes a situation where the person whose conversations are overheard has been careless" and that, since petitioners took "reasonable and ordinary precautions" to hide what they said, the Government should not be permitted to put in evidence the conversations which were nevertheless overheard

35 Vt. 378, 382; *Hoy* v. *Morris*, 13 Gray (Mass.) 519; *Knight* v. *State*, 114 Ga. 48; *State* v. *Hester*, 134 S. E. 885 (S. C.); *Padgett* v. *State*, 125 Ark. 471; *Hunter* v. *State*, 111 Tex. Cr. 252; *United States* v. *Harnish*, 7 F. Supp. 305 (D. Me.); see 3 Wharton, *Criminal Evidence* (11th ed., 1935), p. 2340.

The admission of evidence obtained by wire-tapping has never been successfully challenged on the ground that it was obtained in violation of the Fourth Amendment. See *Valli* v. *United States*, 94 F. (2d) 687 (C. C. A. 1); *Kerns* v. *United States*, 50 F. (2d) 602 (C. C. A. 6); *Foley* v. *United States*, 64 F. (2d) 1 (C. C. A. 5), certiorari denied, 289 U. S. 762.

(Br. 18). Under this test, an informer secreted in the room with consent of the owner or lawful tenant would not be permitted to testify because people do not ordinarily examine the closets and look under the table before they engage in conversation. Further, under this contention it would be impossible to use evidence obtained by feigned accomplices, stool pigeons, and similar police methods which manifestly invade the privacy of criminals as fully as a detectaphone, and which yet cannot be discovered by the use of ordinary precautions. The answer to the argument was given by Mr. Justice Roberts in his separate opinion in *Sorrells* v. *United States*, 287 U. S. 435, where he stated (pp. 453–454):

> Society is at war with the criminal classes, and courts have uniformly held that in waging this warfare the forces of prevention and detection may use traps, decoys, and deception to obtain evidence of the commission of the crime. Resort to such means does not render an indictment thereafter found a nullity nor call for the exclusion of evidence so procured. * * *

See also *McGuire* v. *United States*, 273 U. S. 95, 99, where the Court pointed out that "A criminal prosecution is more than a game where the Government may be checkmated and the game lost merely because its officers have not played according to rule." [12]

[12] Petitioners also urge that, even though the agents lawfully entered the adjoining office, the affixing of the detecta-

Surely the use of feigned accomplices, stool pigeons, and informers is quite as distasteful a business as wire-tapping or the use of a detectaphone; we can conceive no logical reason why the one method of crime detection should be deemed within the constitutional protection and the other without. And unless the petitioners can suggest such a logical reason—as distinct from a purely emotional reaction—we believe that no distinction between the two types of situation should or properly can be drawn.

3. To the fear expressed by Mr. Justice Brandeis in the *Olmstead* case of the effects of scientific progress in crime detection upon privacy (p. 474) we suggest that when men learn to see through walls and to read thought, these faculties will be employed by criminals against society and society should be able to protect itself by the same

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phone to the outer wall of Shulman's office amounted to an unconstitutional trespass, just as if it were placed on the outside wall of a "shack isolated in the woods" (Br. 16–17). The short answer to petitioners' contention is that Shulman had no control over the inside walls of the adjoining office, and therefore the agents committed no trespass in using the detectaphone. Moreover, even if we accept petitioners' hypothetical case, the law is settled that the constitutional guaranty is not coextensive with the definition of a civil trespass, and that a mere trespass, even for the purpose of observation, where there is no forcible entry, is not violative of the Fourth Amendment. *Hester* v. *United States*, 265 U. S. 57; *United States* v. *Phillips*, 34 F. (2d) 495 (N. D. N. Y.); *Koth* v. *United States*, 46 F. (2d) 59 (C. C. A. 9); *Raine* v. *United States*, 299 Fed. 407 (C. C. A. 9), certiorari denied, 266 U. S. 611; cf. *McGuire* v. *United States*, 273 U. S. 95.

weapons. In any event, Congress, we may assume, will be alive to the problem should it arise. And to the fear which others suggest that wire-tapping and similar devices may be used to harass dissident political groups, our answer is that the liberty of the individual lies not in a man's right not to have his words and thoughts known in a court of law but in a firm protection of freedom of speech and of thought.[18] In other words the problem in the present case is limited strictly to the Fourth and

[18] "In this connection, a fear has been expressed that freedom of opinion will be endangered if such evidence may be received. A system of espionage of the Old World variety is visioned, wherein one's privately expressed opinions and his copy of Marx behind the door in the library will be ferreted out and used in evidence against him—for just what crime is not made clear. So long as we have no political crimes, we need not fear that such evidence will be used to our hurt. Some fear, perhaps justifiably, that we may see again the Sedition Acts of old, and they feel that we should begin now to exclude illegally obtained evidence and not set a precedent which may be availed of at that time. But the government that so far breaks with our time-honored traditions of freedom of speech and opinion, that so far ignores Constitutional restrictions as to make one's views criminal, will not be deterred by another tradition a quarter of a century old! If we are to have political crimes, the necessary rules of evidence will come in as their handmaidens, even though we exclude them now. Therefore, we need not fear that we are setting dangerous precedents for those who will need none. The question is properly considered in the light of what we, today, recognize as crimes. If the guardians of liberty will focus their attention on the substantive law, they need not fear that any innocent man will suffer from the admission of any reliable evidence." Plumb, *Illegal Enforcement of the Law*, 24 Corn. L. Q. 337, 372–373.

Fifth Amendments (*Boyd* v. *United States*, 116 U. S. 616) and has nothing to do with the First Amendment. Plainly the right to say and think what one pleases without fear of governmental retribution differs widely from the right not to have one's thoughts and words known and weighed by our tribunals of justice in the enforcement of the criminal law. Freedom of speech is a valuable right, not because it insures the liberty to speak and think in secret, but because it permits the free expression of opinion and the free interchange of ideas. Cf. dissent of Mr. Justice Holmes in *Abrams* v. *United States*, 250 U. S. 616, 630.

We do not deny, of course, that the employment of devices such as the detectaphone and wire-taps may be abused. Instances of abuse (mostly at the hands of persons other than federal law officers) are cited in the brief *amicus curiae* filed by Congressman Eliot. But it seems obvious that such occurrences, except in the case of federal law officers, would not be prevented by holding them to be violations of the Fourth Amendment, since that amendment contains no deterrent penalties. Moreover, many of the abuses mentioned by Congressman Eliot were in violation of the Federal Communications Act, thus indicating that they may occur even though unlawful and even though Congress enacts penalty provisions.

The possibility of abuse exists as to each of the useful powers of government, but this fact is an argument for punishing abuse or for enacting reg-

ulatory legislation, and not for constitutional elimination of those powers.[14] "It must be remembered," said Mr. Justice Holmes in *Missouri, Kansas & Texas Ry Co.* v. *May*, 194 U. S. 267, 270, "that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." And in discussing the restrictions upon the constitutional spending power in *United States* v. *Butler*, 297 U. S. 1, 87, Mr. Justice Stone added, "Another is the conscience and patriotism of Congress and the Executive." As was pointed out in both cases, an enlightened people, acting through a responsible legislature and executive, is the ultimate safeguard of liberty.

Congressman Eliot, in his brief *amicus curiae*, states (p. 8) that in general the use of scientific devices to intercept messages does not serve its avowed purpose of catching criminals. He also urges (pp. 13–15) that the prevalent use of such devices, including, apparently, by Government officers, might constitute a threat to national defense. Excerpts from various statements by Government officials are cited in support of these contentions. These excerpts, however, give a misleading picture of the real views of those immediately charged with the duty of preventing crime, appre-

[14] Compare Mr. Justice Holmes' treatment of the "abuse argument" as applied to the question of state taxation of federal instrumentalities: "The power to tax is not the power to destroy while this Court sits." *Panhandle Oil Co.* v. *Knox*, 277 U. S. 218, 223.

hending criminals, and safeguarding our country from enemies both foreign and domestic. According to those officers, who presumably are in the best position to judge the utility of and need for the devices in question, it is not merely desirable, but essential, that methods of detection such as wire-tapping be resorted to in certain classes of crimes, notably in cases of espionage, sabotage, kidnapping and extortion.

Thus in his Annual Report dated January 3, 1941, for the fiscal year ended June 30, 1940, Attorney General (now Mr. Justice) Jackson, in recommending legislation which would legalize the interception of messages in such cases, subject to appropriate safeguards, stated, *inter alia* (pp. 11–12): "Experience has shown that monitoring of telephone communications is essential in connection with investigations of foreign spy rings."[15] A similar view is held by the Director of the Federal

[15] See also the letter of Attorney General (now Mr. Justice) Jackson, dated March 19, 1941, to the chairman of the House Committee on the Judiciary, urging favorable action on H. R. 2266 which permitted wire-tapping in limited types of cases. Hearings before House Committee on the Judiciary on H. R. 2266 and H. R. 3099, 77th Cong., 1st Sess., pp. 18–20. The letter cited the following actual example of a case in which wire-tapping should be permitted: "A short time ago a small child was kidnaped in California. There was reason to expect that demands would be made upon the parents by telephone. If the voice making such a call were recorded, preserving its accents, its peculiarities of speech, and its exact words, it would be a scientific means of identification not subject to the faults of hearing or of memory which so often make identification weak. It might be decisive in saving the

Bureau of Investigation. In February 1941, in recommending the adoption of legislation such as that favored by the Attorney General, he stated:

> * * * my view is that wire tapping should not be permitted except as to such crimes as I have described, and even then in such limited group of cases only under strict supervision of higher authority exercised separately in respect to each specific instance. In the group of cases I have in mind, such as espionage, sabotage, kidnaping, and extortion, wire tapping as an investigative function is of considerable importance.[16]

Likewise, in a letter to Congressman Eliot dated February 21, 1941, which was introduced in hearings before the House Judiciary Committee, President Roosevelt, while pointing out that he did not believe wire-tapping should be used in cases of "domestic crimes" except possibly kidnaping and extortion, said:

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life of the child, or in convicting the kidnaper, and it might be equally decisive in clearing an innocent person unfortunate enough to be under suspicion."

In a press release dated March 18, 1940, the Attorney General said that he was informed by the Director of the Federal Bureau of Investigation that "without the use of wire-tapping several kidnapping cases would not have been solved."

[16] Hearings before House Committee on the Judiciary, *supra*, p. 112. Attorney General Biddle holds a similar view. See Hearings on nomination of Francis Biddle as Attorney General, before subcommittee of Senate Committee on the Judiciary, 77th Cong., 1st Sess., not printed.

> There is, however, one field in which, given the conditions in the world today, wire tapping is very much in the public interest. This Nation is arming for national defense. It is the duty of our people to take every single step to protect themselves. I have no compunction in saying that wire tapping should be used against those persons, not citizens of the United States, and those few citizens who are traitors to their country; who today are engaged in espionage or sabotage against the United States.[17]

It should be noted, too, that in 1938 both houses of Congress passed legislation authorizing federal law enforcement officials to intercept communications in any criminal investigation. S. 3756, 75th Cong., 3rd Sess., 83 Cong. Rec. 7053, 7054, 9453. The bill failed to become a law because there was a slight difference in phraseology in the form in which it passed the two houses and the session closed before the difference was cured. See Annual Report of the Attorney General for 1940, p. 12.

Any possible doubt as to the utility of mechanized interception must vanish in the face of the recent report of the Commission headed by Mr. Justice Roberts appointed by the President to ascertain and report the facts relating to the Japanese attack upon Hawaii. The pertinent portions of the report, which is dated January 23, 1942, are set

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[17] *Id.*, p. 257.

forth in the footnote.[18] They show, in substance, that one of the reasons for the success of the attack was the fact that restrictions against resort to "certain methods" (i. e., presumably interception and

[18] Paragraph XVI of the Commission's findings of fact, as reported in the New York Herald Tribune, January 25, 1942, states *inter alia:*

"There were, prior to December 7, [1941] Japanese spies on the Island of Oahu. Some were Japanese consular agents and others were persons having no open relations with the Japanese foreign service. These spies collected, and through various channels transmitted, information to the Japanese Empire respecting the military and naval establishments and dispositions on the island.

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"* * * The United States being at peace with Japan, restrictions imposed prevented resort to certain methods of obtaining the content of messages transmitted by telephone or radio telegraph over the commercial lines operating between Oahu and Japan. The bureau and the local intelligence staffs were unable, prior to Dec. 7, to obtain and make available significant information respecting Japanese plans and fleet movements in the direction of Hawaii.

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"It was believed that the center of Japanese espionage in Hawaii was the Japanese consulate at Honolulu. It has been discovered that the Japanese consul sent to and received from Tokyo in his own and other names many messages on commercial radio circuits. This activity greatly increased toward Dec. 7. The contents of these messages, if it could have been learned, might have furnished valuable information. In view of the peaceful relations with Japan and the consequent restrictions on the activities of the investigating agencies they were unable prior to Dec. 7 to obtain and examine messages transmitted through commercial channels by the Japanese Consul, or by persons acting for him."

Paragraph 15 of the Commission's conclusions refers to two messages from the War Department to the commanding

the like) of obtaining the contents of telephone and radio telegraph messages to Japan prevented effective counter espionage.

Another recent example indicating the disastrous consequences which might result from construing the Fourth Amendment in the manner advocated by the petitioners, is afforded by the facts revealed in a letter dated June 30, 1941, from Attorney General Jackson to Representative Sabath, Chairman of the House Rules Committee (Debate on H. R. 2266, 87 Cong. Rec., unbound, p. 5884, 77th Cong., 1st Sess., June 30, 1941). The letter stated:

> You may be interested to know that since the hearings before the Judiciary Committee the sabotage of Axis ships in American harbors was ordered by telegraph. Several of the ships' masters have themselves asserted the receipt of telegrams from the Italian naval attaché to that effect.

It concluded:

> * * * Unless we can have legislation of the type I have recommended, our wire systems will continue to be the safest and most effective methods of communication that foreign agents can employ against our Government.

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general at Hawaii "which warned him not to resort to illegal methods against sabotage or espionage"; and paragraph 19, listing the causes contributing to the success of the attack, lists among other causes "Restrictions which prevented effective counter-espionage."

We use these illustrations, not as an argument *in terrorem*, but to show the implications of the position which this Court is now asked to adopt. It may seem of no great consequence whether under the Fourth Amendment police officers may use a detectaphone to overhear the conversations of dishonest attorneys plotting to rob creditors of $400.00. But it is of vital consequence whether a military officer or other government agent may overhear or intercept the communications of suspected spies or saboteurs. We earnestly submit, therefore, that the Court should follow its conclusion in the *Olmstead* case, and should hold that the use of devices such as the detectaphone and wire-tapping is not to be sacrificed to speculative fears of future abuse, any more than is the exercise of any of the other powers of government.

C. EVEN IF THE USE OF THE DETECTAPHONE CONSTITUTED A SEARCH, IT WAS NOT AN "UNREASONABLE" SEARCH WITHIN THE MEANING OF THE FOURTH AMENDMENT

If, despite the contentions we have advanced, this Court should see fit to overrule the *Olmstead* decision and should hold that the use of a detectaphone constitutes a "search," the question would still remain whether the "search" in this case was "unreasonable" within the meaning of the Fourth Amendment. This, in turn, requires inquiry as to what standard of "reasonableness" is to be applied to the use of such devices as the

detectaphone and wire-tapping in the absence of Congressional action.

The general rule established by the courts with respect to the ordinary type of search and seizure is that a search or seizure without a warrant is reasonable only when incidental to an arrest for which there is probable cause. See *Agnello* v. *United States*, 269 U. S. 20; *Carroll* v. *United States*, 267 U. S. 132.[19] In all other cases, a warrant, based on sufficient affidavit or application, properly describing the person, premises, and property to be seized, appropriately executed and returned, is a prerequisite to the reasonableness of the search.[20]

This rule obviously cannot be assimilated to a situation like that presented in the instant case. There is no possible occasion for a detectaphone "search" incidental to an arrest. Speech during the course of an arrest is likely neither to be enlightening in crime detection nor to require the use of any device such as the detectaphone or wire-tapping in order for it to be heard.

[19] Even then, of course, there are limitations upon what property may be taken in connection with an arrest, and the scope of search incidental to the arrest. Cf. *Gouled* v. *United States*, 255 U. S. 298; *Amos* v. *United States*, 255 U. S. 313; *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385.

[20] For a collection of decisions as to the necessary elements of valid warrant, see Cornelius, *Search and Seizure* (1930 ed.), pp. 339–583.

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Nor can the failure to obtain a warrant to use the detectaphone be decisive. Whatever the practical possibilities of devising a warrant procedure for the use of such instruments,[21] Congress has provided no such procedure as yet. And current warrant procedure is not capable of application to "search" by detectaphone, for it deals with the taking of stolen or embezzled property or property used to commit a felony, requires an underlying affidavit "particularly describing the property," enjoins the issuing officer to command the searcher forthwith to search "for the property specified, and to bring it before the judge or commissioner," and directs the searcher to deliver to the issuing officer "a written inventory of the property taken" (Act of June 15, 1917, 40 Stat. 217, 228, 229, 18 U. S. C., secs. 612, 613, 616, 623).

No argument can be made that the absence of a warrant procedure applicable to detectaphones reflects a Congressional determination that they shall not be used. Congress was informed by this

[21] See Art. 1, Sec. 12, of the New York Constitution, 1938, which provides for a warrant procedure for wire-tapping:

"The right of the people to be secure against unreasonable interception of telephone and telegraph communications shall not be violated, and ex parte orders or warrants shall issue only upon oath or affirmation that there is reasonable ground to believe that evidence of crime may be thus obtained, and identifying the particular means of communication, and particularly describing the person or persons whose communications are to be intercepted and the purpose thereof."

See Greenman, *Wire Tapping. Its Relation to Civil Liberties*, pp. 44–48.

Court in the *Olmstead* case that the use of such devices did not constitute a "search" at all; consequently Congress can scarcely be deemed to have disapproved of their use, simply because it did not provide for a warrant procedure which it had no reason to believe was necessary. On the contrary, if the silence of Congress under these circumstances signifies anything, it is that Congress believes it unnecessary at present to place restrictions upon the use of the detectaphone.

Furthermore, a holding that the "reasonableness" of the use of a detectaphone is to be judged by orthodox warrant standards would probably preclude Congress from ever legislating on the subject at all. This is so because this Court has said that the warrant provision of the Fourth Amendment prohibits warrants to secure evidence and that only instruments of crime or contraband property may be seized under a warrant. *Boyd* v. *United States*, 116 U. S. 616; *Gouled* v. *United States*, 255 U. S. 298; *United States* v. *Lefkowitz*, 285 U. S. 452. To import this restriction into the field of "search" by aural observation would be to bar law enforcement officers from the effective use of detectaphones and similar devices and reserve their use only to wrongdoers. For the primary necessity and utility of the devices is to secure evidence. And even in those comparatively few cases where the speech which is "searched" may be said to be an "instrument" of

the crime, a warrant, if one be held necessary, could not issue under the orthodox rules since it would be impossible to ascertain in advance precisely when and what part of any particular conversation would be an element of the crime, what part would be "evidence" of the crime, and what would be wholly irrelevant to any matter of legitimate public concern. Consequently, it seems clear that a decision holding that the securing of a warrant is a prerequisite to the use of a detectaphone, and that no warrant can be issued in respect of "evidential" speech, would mean a practical prohibition of this essential crime detection device, even under the most careful safeguards.[22]

In view of these considerations, we believe that if the concept of what is a "search" under the Fourth Amendment is extended, the view as to what constitutes an "unreasonable" search must be adjusted accordingly. The issue is not unlike that presented to this Court in *Carroll* v. *United States*, 267 U. S. 132. There the Court was faced with the new problem of detecting bootleggers in fast-moving automobiles upon a heavily traveled highway which made the use of search warrants impracticable. The Court departed from the usual rule that a search may not be made without

[22] The State of New York recognized that "search" of speech as a practical matter necessitated search for evidence and, accordingly, included in its Constitution permission to tap wires for evidence, under proper safeguards. See *supra*, note 21, p. 43.

a warrant except as an incident to an arrest, and held that the search of an automobile for contraband, without any warrant at all, was reasonable if made upon probable cause that the Prohibition Act was being violated. The Court pointed out that the Fourth Amendment does not denounce all searches and seizures, but only such as are "unreasonable" (267 U. S. at p. 147) and that the question of what is reasonable must be determined "in a manner which will conserve public interests as well as the interests and rights of individual citizens" (p. 149). See also *United States* v. *Lee*, 274 U. S. 559; *Husty* v. *United States*, 282 U. S. 694.

Considerations equally as important as those which motivated the Court to adjust the concept of "reasonableness" in the *Carroll* case should, we submit, prompt the Court to adjust it similarly in the case of detectaphones. The Court should hold, we believe, that the use of a detectaphone, if it is a "search" at all, is not an "unreasonable" search when the detectaphone is used by law enforcement officers who have reasonable cause to believe that by its use they will obtain evidence revealing the commission of a crime. Such a holding is, we think, required by society's need for the efficient detection and apprehension of criminals and involves no undue sacrifice of the privacy of individuals. As Mr. Justice Cardozo stated in *Snyder* v. *Massachusetts*, 291 U. S. 97, 122, "justice though due to the accused is due to the accuser

also"; the task of the Court is to "keep the balance true." To characterize as "unreasonable"[23] the use of a detectaphone where there is reasonable cause to believe that evidence will be obtained revealing the commission of a crime would constitute, we submit, an undue tipping of the scales in favor of the individual's interest in privacy at the expense of society's right of self-defense.[24]

In any event, in the present case the use of the detectaphone may be sustained under the normal rules governing ordinary searches without a warrant, upon the narrow ground that the conversa-

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[23] "There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances." *Go-Bart Importing Co.* v. *United States*, 282 U. S. 344, 357.

[24] In replying to Congressman Eliot's inquiry as to his views concerning H. R. 2266, a bill to authorize wire-tapping under certain conditions, President Roosevelt stated:

"The use of wire tapping to aid law-enforcement officers raises squarely the most delicate problem in the field of democratic statesmanship. It is more than desirable; it is necessary that criminals be detected and prosecuted vigilantly as possible. It is more necessary that the citizens of a democracy be protected in their rights of privacy from unwarranted snooping. As an instrument for oppression of free citizens, I can think of none worse than indiscriminate wire tapping.

"Somewhere between these two conflicting ideals we must find balance. We must find that balance whereby society is protected against the criminal and at the same time the citizens of that society are protected against over-zealous prosecution by law-enforcement officials. We will not achieve perfection, because it does not exist."

Hearings before House Committee on the Judiciary on H. R. 2266 and H. R. 3099, 77th Cong., 1st Sess., p. 257.

tions "searched" were a part of a crime in process of being committed.

Hoffman, a reputable attorney, promptly reported petitioners' felonious scheme to the referee in bankruptcy, and immediately thereafter to the government agents (R. 202, 291). Acting under instructions of the government agents, Hoffman then feigned willingness to participate in the conspiracy and attended the several conferences at which the petitioners planned its execution (R. 291). Meanwhile, as arranged with the government agents, Hoffman kept the agents informed of the scheduled conferences (R. 303); it was pursuant to this information that the detectaphone was installed and was utilized on the occasions which Hoffman indicated as appropriate (R. 303).

In these circumstances, it is clear that the agents had probable cause to believe that a crime was being committed in Shulman's office on the afternoon that the detectaphone was affixed to the outer wall, and thereafter on the days when the detectaphone was used. Furthermore, the agents had reliable information which made it possible for them to focus their listening on the precise conversations which themselves constituted the conspiracy.

If there was a "search," therefore, it was a "search" for the very conversations which were the instruments of the crime. For in a conspiracy the conspirators' plottings are the instruments of the crime just as a gun may be the in-

strument of murder or opium the instrument of a narcotic violation. Accordingly, the "search" was within the narrow rule which holds that weapons or contraband are proper objects of search. Cf. *Weeks* v. *United States*, 232 U. S. 383; Act of June 15, 1917, Title XI, 40 Stat. 217, 228–230, 18 U. S. C. secs. 611–633. We submit that the interests of society justify this type of "search" where conversations are used as the instruments of a conspiracy as fully as they justify the traditionally permissible seizure of tangible weapons or contraband.

D. IN ANY EVENT, NO CONSTITUTIONAL RIGHTS OF PETITIONERS THEODORE AND MARTIN GOLDMAN WERE INVADED

Even if the Court overrules all our foregoing contentions and holds that the use of the detectaphone was an unreasonable search forbidden by the Fourth Amendment, it should sustain the affirmance of the convictions of petitioners Theodore and Martin Goldman. The detectaphone was placed on the outer wall of petitioner Shulman's office only, and its use cannot reasonably be said to have violated the constitutional right of the Goldmans "to be secure in their persons, houses, papers, and effects."

The decisions of the lower federal courts are uniform to the effect that the immunity granted by the Fourth Amendment is personal to the owner or lawful tenant of the premises searched, hence that only he may complain of the admission of evidence

uncovered by the search."[25] Cf. *Agnello* v. *United States*, 269 U. S. 20, 35.

In their brief petitioners do not attack the rule of the decisions cited in the footnote. Nor do they otherwise urge, as distinct from assume (Br. 7, 34), that the Goldmans have standing to complain of the evidence obtained by means of the detectaphone. It may also be noted that the motion to suppress the evidence was filed in behalf of Shulman alone (R. 20–27). Moreover, there is no possible basis for a claim that any constitutional right of Theodore Goldman was infringed. He was not even present in Shulman's office during any of the conversations which were overheard.

It is true that Martin Goldman participated in one of the conferences which were overheard and

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[25] *Coon* v. *United States*, 36 F. (2d) 164 (C. C. A. 10); *Lewis* v. *United States*, 92 F. (2d) 952 (C. C. A. 10); *Whitcombe* v. *United States*, 90 F. (2d) 290 (C. C. A. 3), certiorari denied, 302 U. S. 759; *Belcher* v. *United States*, 50 F. (2d) 573 (C. C. A. 8); *Shore* v. *United States*, 49 F. (2d) 519 (App. D. C.), certiorari denied, 283 U. S. 865; *Ingram* v. *United States*, 113 F. (2d) 966 (C. C. A. 9); *Creech* v. *United States*, 97 F. (2d) 390 (C. C. A. 5); *MacDaniel* v. *United States*, 294 Fed. 769 (C. C. A. 6), certiorari denied, 264 U. S. 593; *Remus* v. *United States*, 291 Fed. 501 (C. C. A. 6), certiorari denied, 263 U. S. 717; *Chicco* v. *United States*, 284 Fed. 434 (C. C. A. 4); *Connolly* v. *Medalie*, 58 F. (2d) 629 (C. C. A. 2); *Haywood* v. *United States*, 268 Fed. 795 (C. C. A. 7), certiorari denied, 256 U. S. 689; cf. *Nunes* v. *United States*, 23 F. 2d) 905 (C. C. A. 1). See also Point IV of the Brief for the United States in *Goldstein* v. *United States*, No. 256, present term.

related in evidence. But since there was no physical search of his person or invasion of his property, it would be far removed from the language and purpose of the Fourth Amendment and from all usual notions of a "search" or "seizure" to hold that the Government agents violated any right of his. If such a holding were made, on the theory that he had a right not to have his conversation overheard by a concealed scientific device, it would seem that a similar holding would be required even if the case were one where the Government agents had obtained Shulman's consent to using the detectaphone, or had used it at his direction. Furthermore, if a person has a right not to have his conversation overheard by such a device, it would be an absurd distinction for the courts to continue to sustain the more familiar, though less accurate, police methods of ordinary eavesdropping, shadowing suspects, and using informers—methods which were known long prior to the Fourth Amendment, and, as this Court has indicated, were not intended to be barred by it. Cases cited footnote 3, *supra*, p. 20.

III

LISTENING BY MEANS OF A DETECTAPHONE TO ONE WHO TALKS INTO A TELEPHONE IS NOT A VIOLATION OF SECTION 605 OF THE FEDERAL COMMUNICATIONS ACT

Petitioners' contention (Br. 22) that Section 605 of the Federal Communications Act was violated when the government agents overheard, by

means of the detectaphone, Shulman's end of two telephone conversations as he spoke into the receiver is without merit. There was neither "communication" nor "interception" within the meaning of the Act.

Petitioners' view that a communication comes within the protection of the Act "once a speaker has uttered words with the intent that they constitute the transmission of a telephonic conversation" (Br. 25–26) ignores the plainly expressed purpose of the Communications Act to protect the privacy of the means of communication and not the secrecy of the conversations. The scope of the protection is thus defined by Section 3:

> (a) "Wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

In other words, the protection of the statute attaches only to the message in the course of its transmission by the telephone, telegraph, or radio company. See *Diamond* v. *United States*, 108 F. (2d) 859 (C. C. A. 6), where it was held (p. 860) that "the privacy to be achieved by the mandate

of the statute—the privacy of a conduit or instrumentality".

Words are not endowed with special immunity simply because they are spoken into a telephone mouthpiece "with the intention" that they constitute a "wire communication." The user of a telephone entrusts his message to the circumambient air which, indifferently, conveys his words to telephone pick-up: friendly bystanders, casual eavesdroppers, or officers of the law. Only the message in its journey over transmission facilities has the protection of Section 605. The situation is not unlike the case of a letter intended for the mails, where it will be within the protection of the Fourth Amendment (*Ex parte Jackson*, 96 U. S. 727); the recollection of a stenographer and her notes of dictation are nevertheless unquestionably proper sources of evidence.

Not only were the words overheard not a "communication" within the meaning of Section 605, but there was no "interception." Shulman's message proceeded undisturbed from the telephone receiver over the wires to the other parties without any infringement by the agents upon this privileged channel of communication. In fact, as a matter of physics, the energy which was transformed into electrical vibrations by the telephone was different from the sound waves which motivated the impulses penetrating the wall and activating the delicate crystal in the detectaphone, although both had a common source in Shulman's

vocal cords.[26] Moreover, it is of the essence of a telephone interception that the interceptor be in a position to hear both parties to the conversation,[27] that is, the interception must occur somewhere along the conduit which the statute seeks to protect. Cf. *United States* v. *Polakoff*, 112 F. (2d) 888, 890 (C. C. A. 2), certiorari denied, 311 U. S. 653.

IV

PETITIONERS WERE NOT ENTITLED TO INSPECT CONFIDENTIAL MEMORANDA PREPARED BY FEDERAL AGENTS FROM WHICH THEY REFRESHED THEIR RECOLLECTIONS BEFORE BEING SWORN AS WITNESSES

Petitioners contend (Br. 27–33) that the trial judge erred in denying them an opportunity to inspect the notes and memoranda which the F. B. I. agents used to refresh their recollection in preparation for trial. The settled federal rule,

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[26] Contrary to the petitioners' assertion, we do not contend that the prohibition against interception is limited to "wire tapping, physical contact with telephone instruments or the means employed to ascertain the existence or contents of a communication" (Br. 25). If the Act may be violated as much by reading a telegram over a messenger's shoulder as it is by tapping a telephone wire, as petitioners suggest, it is because in each case the communication has been entrusted to the transmitting agent protected by Section 3 of the Communications Act.

[27] We do not argue, as petitioners imply, that "the words of both parties" must be overheard before there can be an interception of a communication, since manifestly there may be a prohibited interception where the sender talks to another who is not listening or fails to answer.

however, is to the contrary. As stated in *Lennon* v. *United States*, 20 F. (2d) 490, 494 (C. C. A. 8), "It is only where the witness uses the paper to refresh his memory while on the stand that there exists a right to compel the production of the writing for inspection." See also *Little* v. *United States*, 93 F. (2d) 401–407 (C. C. A. 8), certiorari denied, 303 U. S. 644, 668; *Mullaney* v. *United States*, 82 F. (2d) 638, 643 (C. C. A. 9); Jones, *Evidence* (2d ed. 1926) Vol. 5, sec. 2387; cf. *Hull Co.* v. *Marquette Mfg. Co.*, 208 Fed. 260, 265 (C. C. A. 8.); *Lowrie* v. *Taylor*, 27 App. D. C. 522.[28]

Moreover, even under the broader rule advocated by Professor Wigmore[29] permitting, at the discretion of the trial court, inspection of any refreshing memorandum, it cannot be said that the trial court abused its discretion. Cf. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 231–237. The court expressly refused to exhibit the documents to defense counsel at the preliminary hearing on the ground that to do so would have resulted in a premature disclosure of the Government's evidence (R. 108–111, 127, 477). See *Nardone* v. *United States*, 308 U. S. 338, 342;

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[28] See also *Northern Indiana Public Service Co.* v. *Vesey*, 210 Ind. 338; *State* v. *Paschall*, 182 Wash. 304; *State* v. *Magers*, 36 Ore. 38; *Hamilton* v. *Rice*, 15 Tex. 382; *State* v. *Kwiatkowski*, 83 N. J. L. 650; *State* v. *Hammond*, 46 Utah 249; *Loose* v. *State*, 120 Wis. 115.

[29] Wigmore, *Evidence* (3rd ed. 1940), Vol. 3, secs. 762, 765.

United States v. *Seaman*, 115 F. (2d) 371, 374-375 (C. C. A. 2).

In any event, the ruling of the trial court should be sustained upon the independent ground that the documents called for were privileged official documents (R. 477-478). Rev. Stat. 161, 5 U. S. C. § 22; Department of Justice Circular No. 3229, May 2, 1939;[30] see *Boske* v. *Comingore*, 177 U. S. 459; *Ex parte Sackett*, 74 F. (2d) 922 (C. C. A. 9); *In re Huttman*, 70 Fed. 699, 701 (D. Kan.); *In re Weeks*, 82 Fed. 729 (D. Vt.); *In re Lamberton*, 124 Fed. 446 (D. Ark.); *Harwood* v. *McMurtry*, 22 F. Supp. 572 (D. Ky.); 25 Op. Atty. Gen. 326.

CONCLUSION

The judgments below should be affirmed.

Respectfully submitted.

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JANUARY 1942.

[30] The complete text of this circular is set forth in the Appendix, *infra*, p. 58.

APPENDIX

Department of Justice Circular No. 3229, May 2, 1939, provides:

> All official files, documents, records and information in the offices of the Department of Justice, including the several offices of the United States Attorneys, Federal Bureau of Investigation, United States marshals, and Federal penal and correctional institutions, or in the custody or control of any officer or employee of the Department of Justice, are to be regarded as confidential. No officer or employee may permit the disclosure or use of the same for any purpose other than for the performance of his official duties, except in the discretion of the Attorney General, The Assistant to the Attorney General, or an Assistant Attorney General acting for him.
>
> Whenever a subpoena *duces tecum* is served to produce any of such files, documents, records or information, the officer or employee on whom such subpoena is served, unless otherwise expressly directed by the Attorney General, will appear in court in answer thereto and respectfully decline to produce the records specified therein, on the ground that the disclosure of such records is prohibited by this regulation.

Section 66, Rules and Regulations of the Federal Bureau of Investigation, United States

Department of Justice, issued and approved by the Attorney General, further provides:

(66) *Records and Information.*

* * * * * *

All records and information in the offices of the Federal Bureau of Investigation are in the custody and control of the bureau for the purpose of the detection and prosecution of crimes against the United States or the preparation of cases in which the United States is or may be a party in interest. Employees have no control over such records or information to permit the use thereof for any other than official purposes, except as hereinbefore noted. Therefore, if the court orders the production of such files, documents, records, or information, employees shall carefully prepare or procure a copy of the record or statement of information requested, and forward it to the bureau, whereupon it will be referred to the Attorney General, and under the Seal of the Department thereafter transmitted to the judge of the court requesting it, unless it shall be found that circumstances or conditions make it necessary to decline in the interest of public policy to furnish the information.

The bureau desires to offer every possible assistance to the courts, and consideration must be given to each individual case as it arises. However, the above departmental order should be followed in all cases, and the bureau immediately notified in the event this rule is invoked.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

Nos. 962, 963, 980
(October Term, 1940)

MARTIN M. GOLDMAN, JACOB P. SHULMAN, AND THEODORE GOLDMAN,
Petitioners,

against

UNITED STATES OF AMERICA,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF ON BEHALF OF NATIONAL FEDERATION FOR CONSTITUTIONAL LIBERTIES *AMICUS CURIAE.*

ABRAHAM J. ISSERMAN,
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MARTIN M. GOLDMAN, JACOB P. SHULMAN, AND THEODORE GOLDMAN,
Petitioners,

against

UNITED STATES OF AMERICA,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for the National Federation for Constitutional Liberties, an unincorporated association, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae*. Consent to such filing has been duly given by all the par-

ties hereto, including the Solicitor General, and filed with the clerk of this Court.

The National Federation for Constitutional Liberties is pledged to the defense and extension of the Bill of Rights. Its members and affiliates, consisting of individuals, trade unions and civic organizations throughout the United States, are deeply concerned with every invasion of the freedoms therein guaranteed.

It is the profound belief of the National Federation for Constitutional Liberties that in these critical times a sweeping declaration in favor of the rights of the people to be free from unreasonable search and seizure will be a powerful stimulus to that national unity which is necessary for the total defense of our land, our homes and institutions, against the destructive forces of fascism.

The Federation's interest in this case is limited to its constitutional aspects. The Federation is convinced that the decisions below violate the search and seizure provisions of the Fourth Amendment and may, if unreversed, serve as a precedent for the curtailment of the beneficent protection which that amendment affords to the rights of the people.

ABRAHAM J. ISSERMAN,
NATHAN WITT,
Counsel for Federation for
Constitutional Liberties.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

Nos. 962, 963, 980.
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MARTIN M. GOLDMAN, JACOB P. SHULMAN, AND THEODORE GOLDMAN,
Petitioners,

against

UNITED STATES OF AMERICA,
Respondent.

BRIEF ON BEHALF OF NATIONAL FEDERATION FOR CONSTITUTIONAL LIBERTIES *AMICUS CURIAE*.

Statement.

This brief is directed solely to the constitutional question involved in the method by which the evidence used to convict the petitioners of a federal crime was obtained.

The facts of the alleged crime, amply detailed in the briefs of the parties, need not be repeated here. The only facts with which we are here concerned relate to certain activities of agents of the Federal Bureau of Investigation. These agents were informed that a conspiracy was under

way to violate Section 52 (b) (5) of the Bankruptcy Act, and that one of the conspirators was the petitioner Shulman, a New York attorney with offices in Rooms 1509-1510 of an office building in Manhattan. Being apprised in advance of meetings to be held in Shulman's office in connection with the alleged conspiracy, the agents arranged to overhear whatever conversation might take place.

To this end, the federal agents, prior to the meetings, entered Shulman's offices at night, without his knowledge or consent (R. 120). They inspected those offices and their physical arrangement, fully memorizing its layout, its subdivision into smaller offices, the exact portion of the entire suite which was used for Shulman's private office, and the location of the desk and chairs in that private office (R. 103, 112-114, 120-121, 140-142). They observed that near the bottom of one wall of Shulman's private office there was an opening for the entry or passage of steam-heating pipes between that office and Room 1508 adjoining it, (R. 87) which latter office was untenanted at the time (R. 33). The aperture being larger than the steam-pipe, the federal officers inserted and left therein a "carbon microphone" (R. 87), which was connected by wire to an amplifier, the latter being placed in Room 1508 (R. 86).

Thereafter, and for the purpose of overhearing conversations taking place in Shulman's office, the federal agents returned to Room 1508, equipped with headphones to be attached to the aforementioned microphone and amplifier (R. 101-105, 122). They were also equipped with an additional or auxiliary device for listening in on the conversations to be held in Shulman's office, known as a detectaphone, or contact microphone (R. 101, 121-122, 134-135).

This was substantially similar to the carbon microphone but its sensitivity or efficiency was greater, thus permitting its effective use by being placed against the outside of the walls on Room 1509. It did not require any aperture opening into Shulman's office (R. 94, 101).

The government contended that it secured its evidence over the detectaphone only (R. 101-102), and that since the detectaphone did not necessarily require a breaking into, or (so they claim) direct physical trespass upon, Shulman's office, there was no violation of the Fourth Amendment.

ARGUMENT.

POINT ONE.

The use of evidence, secured with the aid of a trespass of petitioner's premises, was a violation of petitioners' rights under the Fourth Amendment.

The constitutional guaranty of privacy, the constitutional right of the people to be secure against unreasonable searches and seizures, is not disputed by the government. The unbroken line of Supreme Court decisions permits no dispute of that right. The cases include:

Boyd v. *United States,* 116 U. S. 616; *Bram* v. *United States,* 168 U. S. 532; *Weeks* v. *United States,* 232 U. S. 383; *Silverthorne Lumber Co.* v. *United States,* 251 U. S. 385; *Gouled* v. *United States,* 255 U. S. 298; *Amos* v. *United States,* 255 U. S. 313; *Agnello* v. *United States,* 269 U. S. 20; *Byars* v. *United States,* 273 U. S. 28.

The rulings in those cases clearly establish that evidence of a federal crime, secured by an illegal entry and trespass, may not be used by the prosecution. The protection against the search for and taking of evidence by such means

> "* * * reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal systems with the enforcement of the laws." *Weeks* v. *United States*, 232 U. S. at page 392.

The government does not deny its entry upon Shulman's premises, and does not deny the illegality of that entry. The government's proofs were that the illegal entry was made for the purpose of installing the carbon microphone. This later proved defective, and was therefore not used (R. 101, 119, 152). However, the government did admittedly use the contact detectaphone (R. 123, 133, 152). Its use was admittedly aided by that illegal entry (R. 103, 112-114, 120-121, 140-142). It may or may not be true, as the government argues in its brief, that the detectaphone *could have been* used just as effectively without the unlawful breaking into Shulman's office. But that is of no moment. The essential fact is that the federal agents *did* use the information and help achieved through their trespass. Their "unreasonable search" without warrant, and in violation of the Fourth Amendment, apprised them of the fact that Shulman's suite of offices in Rooms 1509-1510 was divided by partitions into several smaller rooms, one of which was Shulman's private office (R. 113, 141-142); that that private office had only one wall in common with Room 1508 (R. 113, 140); and that only a portion of the entire

side wall of Room 1508 was a common or party wall with that portion of Room 1509 which was Shulman's private office. Without such knowledge, the agents might have placed the detectaphone against that portion of the wall of Room 1508 which was not in common with Shulman's private office. Without such knowledge, the agents might have attempted to use the detectaphone against the wall of Room 1510, furthest distant from Shulman's private office. So used, the detectaphone might have been incapable of enabling the agents to overhear anything. Without such knowledge, the federal agents might have spent so much time in experimenting with locations for their detectaphone as to have lost their opportunity to hear what was being said in Shulman's private room.

In considering the facts of this case the Court is not concerned with whether the evidence *could have been* secured by legal means, nor with the precise extent to which the unconstitutional act aided in securing the evidence. The essence of the unlawful conduct was the invasion by government agents of the "privacy of the accused", *Weeks* v. *United States*, 232 U. S. at page 394. Any such invasion of that right of privacy, though later deemed unnecessary, or to whatever extent, slight or great, instrumental in securing evidence, results in tainting all the evidence thereby secured.

> "It is not the breaking of his doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefensible right of personal security, personal liberty and private property, * * *." *Boyd* v. *United States*, 116 U. S. at page 630.

The fact that the agents of the Federal Bureau of Investigation utilized in some measure their illegal entry into Shulman's suite of offices to aid them in obtaining their evidence, rendered the use of that evidence unconstitutional.

POINT TWO.

The use of evidence secured through a contact microphone affixed to petitioner's premises, was a violation of petitioners' rights under the Fourth Amendment.

Reversal of the rulings below should not, however, rest on any such narrow ground as the unlawful breaking into and entry upon Shulman's premises. Even without such direct physical entry, the use of the contact microphone was itself an invasion of the petitioners' rights under the Fourth Amendment. The historical background of the Fourth Amendment set forth in this court's opinion in *Boyd* v. *United States supra,* makes that entirely clear.

In its brief and argument submitted at earlier stages in these proceedings, the government has argued that, those who commit acts or say words within the sight or hearing of other persons, do so at the risk of being seen or overheard. Examples were cited in the use of the common eyeglass for those deficient in sight, and in the use of the common earphone or artificial eardrum for those deficient in hearing. It was argued that such persons may freely, without violating the Fourth Amendment, utilize such means to see and hear things openly done and said in their presence. We concede the soundness of that position.

We dispute, however, the government's further argument that microphones, of great sound-amplifying power

and specially used to invade privacy against the wishes of the individual, are in the same category as the common artificial eardrum. The use of such inventions as the contact microphone to invade privacy is contrary to the Fourth Amendment.

As has been pointed out above, the essence of this amendment is its protection of the right of privacy; a man's right to keep inviolate his papers, possessions, words, and expressed thoughts from all unreasonable search and seizure; that is to say, free from search and seizure except upon judicial warrant issued in accordance with the specific provisions of the Fourth Amendment. That right of personal privacy extends rather more forceably to a person's thoughts and utterances. It cannot be said that those thoughts when placed in words upon a sheet of paper are more immune from surreptitious scrutiny or seizure than the same thoughts set forth in spoken words.

A man's thoughts, stated in loud utterances from a public square, are by his own act, no longer private, and therefore may be seized upon and utilized for any proper purposes by officers of the law and the general public alike. Thoughts uttered carelessly, with no precaution against their being overhead, may be used by all who casually overhear. In either case, the initial right of privacy has been destroyed by the person himself through his deliberate or careless act.

The framers of our constitution made no specific mention of detectaphones. This was not solely because such devices did not then exist; no mention was made in the Fourth Amendment of even those devices for search and seizure which did then exist. This amendment was designed

to express the fundamental law in such broad terms as would embrace every present and future circumstance. The contrary view would serve only to stultify the constitutional principles.

> "Legislation, both statutory and constitutional, is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had theretofore taken. Time works changes, brings into existence new conditions and purposes. Therefore a principle to be vital must be capable of wider application than the mischief which gave it birth. This is peculiarly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, 'designed to approach immortality as nearly as human institutions can approach it.' The future in their care and provision for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value and be converted by precedent into lifeless and impotent formulas. Rights declared in words might be lost in reality." *Weems* v. *United States*, 217 U. S. 349, 373.

Certainly, if it came to the attention of this court that some unauthorized person had surreptitiously listened to its deliberations on this very case, the court would recognize it as an invasion of its privacy, without regard to whether that invasion had been accomplished by means of a carbon

microphone inserted within the room, or by a detectaphone placed outside of those chambers or at a distance. Invasion of privacy by the use of a modern scientific method, which penetrates the shielding partition invisibly, is no less real than invasion by use of crowbar and battering ram.

If the incalculable powers of human ingenuity should devise a method of removing articles from a man's home without the taker's physical entry therein, or a method of photographing documents locked away in private chambers without visible physical entry into those chambers, this court would assuredly hold that there had been an invasion of the personal privacy secured by the Fourth Amendment.

In no case is it the actual physical breaking or entry, in no case is it the trespass, which is the gravamen of the offense. *Boyd* v. *United States, supra.* It is the invasion of the right of privacy without justifiable cause, which the Fourth Amendment outlawed.

The vigilance required by the Fourth Amendment should be doubled in this case, because it involves privilege,* which is a special aspect of the constitutional right of privacy.

This court will not permit constitutional safeguards to be whittled away by hair-splitting distinctions, nor by the "adventitious circumstances" of the particular case before it.

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* The privileged character of communications between attorney and client has been recognized and respected in every English and American jurisdiction where the question has arisen. 70 *Corpus Juris* 435; *Jones on Evidence*, 3d ed., p. 1156.

> "It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon". *Boyd* v. *United States*, 116 U. S. at p. 635.

In fulfillment of that duty, and in consonance with the broad scope of our constitution, expressed in *Weems* v. *United States, supra*, this court will not find it difficult to recognize and deal with the most modern and scientific devices for the invasion of privacy.

Conclusion.

For the reasons above stated, the Circuit Court of Appeals for the Second Circuit erred in sustaining the trial court's denial of the motions to exclude and suppress the evidence secured by means of the detectaphone, and the trial court's overruling of the objections to the testimony when offered in evidence, and the convictions below should be reversed.

Respectfully submitted,

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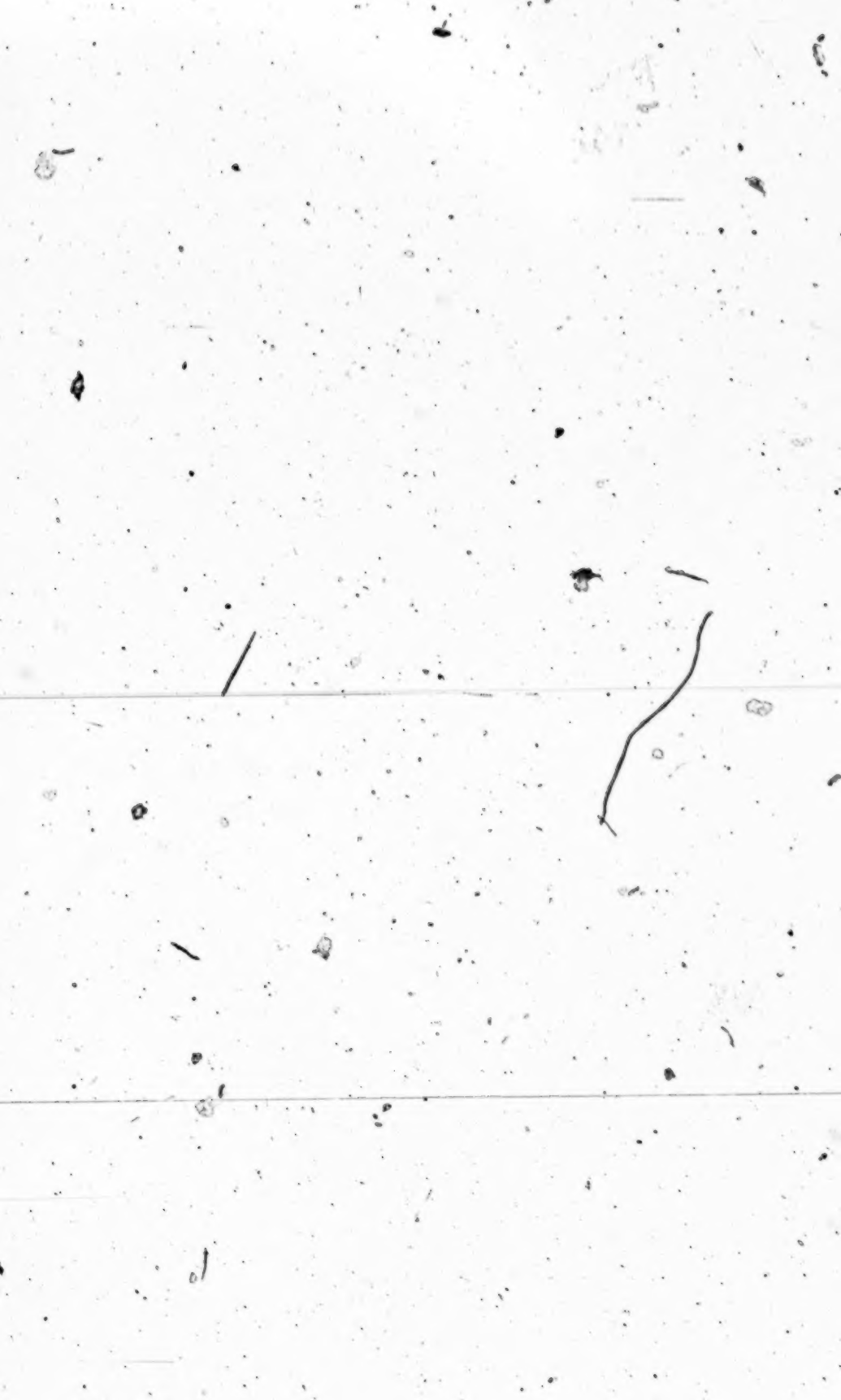

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

Nos. 962, 963, 980.
(October Term, 1940.)

MARTIN M. GOLDMAN, JACOB P. SHULMAN and THEODORE GOLDMAN, *Petitioners*,

against

UNITED STATES OF AMERICA.

BRIEF FOR THOMAS H. ELIOT, AMICUS CURIAE.

THOMAS H. ELIOT,
Amicus Curiae.

January 14, 1942.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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STATEMENT OF INTEREST.

This brief is submitted to the Court by a citizen of the United States who, as a member of a Committee of Congress which has dealt with this subject, has had the opportunity to observe and study facts which bear upon the constitutionality of wire-tapping, detectaphoning, and the like.

The effect of such practices upon persons and groups, the immensity of their application, their lack of utility, and the dangers inherent in them have often been described generally. It is submitted, however, that any estimate of the problem should consider the numerous facts which have been elucidated within the last year by legislative investigation. The submission of this brief is conceived to be the duty of a citizen who has participated in the hearings and debates on the question.

Point I.

The interception of even one end of a telephone conversation, whether by means of a detectaphone or other device, is forbidden by the Federal Communications Act (Act of June 19, 1934, c. 652, sec. 605, 47 U. S. C., sec. 605).

Unlike some of the state statutes forbidding wire-tapping,[1] the federal statute does not employ terms prohibiting only physical interposition on the telephone line. The statute uses the general word "intercept" for the reason that it is intended to have general application to all cases of unauthorized abstraction of messages from the specified channels of communication. Since the statute applies to radio, as well as to telephone and telegraph communication, the word "intercept" must be allowed a meaning broad enough to cover the method by which radio communications are received, namely, without any physical contact between transmitter and receiver.

Nor does the applicability of the statute depend upon the interception of both ends of a conversation. The language of the statute is "communication," intentionally chosen, as was the word "intercept," to cover radio and telegraph, as well as telephone messages. Any part of the words transmitted through the channel of communication is a "communication" and as such, protected by the statute.

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[1] See, for example, N. Y. Penal Law, sec. 1423, which makes it a crime to "unlawfully and wilfully cut, break, tap, or make connection with any telegraph or telephone line, wire, cable or instrument."

The construction that both ends of a telephone conversation must be obtained before the statute can apply is precluded by the provision of the statute that "no person . . . having become acquainted with the . . . purport" of a communication "or any part thereof" may divulge even the "existence" of the communication.

Point II.

The interception of conversation, telephonic or non-telephonic, by means of a detectaphone or any other device is unconstitutional. This case presents, as no previous case before this Court has, a combination of two kinds of official espionage, wire-tapping and detectaphone interception. It is fortunate that the circumstances combine both types, because they are intrinsically one and the same thing from the constitutional point of view and they have often been interrelated in the practices of law enforcement officers. Instruments used to tap wires today will just as easily intercept non-telephonic conversations, while the newest mechanized interceptors will automatically record either one or both ends of telephone conversations if they are placed in certain positions. For example, the device recently used by the Federal Bureau of Investigation to tap the telephone conversations of a labor leader[2] includes a microphone which, in addition to the interception of messages passing over the telephone circuit, picks up all conversation in the immediate vicinity.

The newer developments in mechanized interception emphasize the words of Mr. Justice Brandeis in his dissenting opinion in *Olmstead* v. *United States*, 277 U. S. 438 (1928) when, with the concurrence of the present Chief Justice, he issued this prophetic warning:

> ": . . But 'time works changes, brings into existence new conditions and purposes.' Subtler and more far-reaching means of invading privacy have become avail-

[2] Memorandum of Decision of Presiding Inspector in The Matter of Harry Renton Bridges, Government Printing Office, 1941, p. 183.

able to the Government. Discovery and invention have made it possible for the Government, by means far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet.

"Moreover, 'in the application of a constitution, our contemplation cannot be only of what has been but of what may be.' The progress of science in furnishing the Government with means of espionage is not likely to stop with wire-tapping. Ways may some day be developed by which the Government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home. Advances in the psychic and related sciences may bring means of exploring unexpressed beliefs, thoughts and emotions. 'That places the liberty of every man in the hands of every petty officer' was said by James Otis of much lesser intrusions than these. To Lord Camden, a far slighter intrusion seemed 'subversive of all the comforts of society.' Can it be that the Constitution affords no protection against such invasions of individual security?" (Pages 473-474)

Fundamentally, the question in this case is whether the guaranties against unwarranted search and seizure are to remain effective in an age of mechanical invention. If by the use of new devices the government can invade the privacy and gain knowledge of the confidential communications of the most cautious citizen, the constitutional protection loses virtually all its force and meaning.

The same question was an underlying issue in the *Olmstead* case, *supra*, but is presented much more sharply and insistently today. Invention has proceeded apace: in the case at bar, for instance, an instrument was used which could pick up conversations in a different room, through a thick wall.[3]

In outlawing wire-tapping in 1934 (Federal Communications Act, *supra*, sec. 605), and in rejecting a recent bill to legalize it, Congress considered the effect of the practice,

[3] Record on Appeal, Vol. I, p. 101.

on the privacy of the citizen. And, as Mr. Justice Roberts said in *Nardone* v. *United States*, 302 U. S. 379 (1937), at 383: "The same considerations may well have moved the Congress to adopt Sec. 605 as evoked the guaranty against practices and procedures violative of privacy, embodied in the Fourth and Fifth Amendments."

The objections of four dissenting justices in the *Olmstead* case to mechanized interception are now strengthened by the facts which have since been brought to light, particularly in the consideration of legislative proposals. Since the decision in the *Olmstead* case, fourteen measures dealing with mechanized interception were introduced in Congress: between 1929 and 1932 it was the subject of eight bills which sought to abolish it;[4] it was first forbidden in 1933, in a restriction on the use of funds by one federal agency;[5] it is presently illegal by operation of section 605 of the Federal Communications Act, requested by the Administration and drafted as a measure to provide for unified regulation of the communications industry;[6] since then, four bills have been introduced to authorize mechanized interception by federal agents,[7] but none of them has been enacted into law; the most recent was defeated in the House of Representatives on June 30, 1941. The subject has recently been considered in hearings before three subcommittees of the Senate and one subcommittee of the House of,

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[4] H. R. 4139, 71st Cong., 1st Sess., June 19, 1929; H. R. 5416, 71st Cong., 1st Sess., Nov. 21, 1929; Amendment to S. 3344, 71st Cong., 3rd Sess., Feb. 4, 1931; S. 6061, 71st Cong., 3rd Sess., Feb. 5, 1931; H. R. 23, 72nd Cong., 1st Sess., Dec. 8, 1931; H. R. 5305, 72nd Cong., 1st Sess., Dec. 10, 1931; S. 1396, 72nd Cong., 1st Sess., Dec. 10, 1931; H. R. 9893, 72nd Cong., 1st Sess., Feb. 27, 1932.

[5] 47 Stat. 1381, Act of Mar. 1, 1933.

[6] Act of June 19, 1934.

[7] S. 3756, 75th Cong., 3rd Sess., 1938 (see remarks of United States Senator Robert F. Wagner in Revised Record of New York State Constitutional Convention, 1938, Vol. I, pp. 559-562; H. J. Res. 571, 76th Cong., 3rd Sess., 1940; H. R. 2266, 77th Cong., 1st Sess., 1941; H. R. 3099, 77th Cong., 1st Sess., 1941.

Representatives,[8] in reports of two subcommittees of the Senate,[9] and in a full dress debate in the House.[10]

Some of the facts thus made available are:

(1) Mechanized interception invades the privacy of numberless innocent and unsuspected persons, many times the number of those whose communications are the avowed object of such interception by police. The dragnet character of this process distinguishes it from the ordinary physical search of premises and seizure of papers, and from other types of search and seizure.

The records and testimony leading to these conclusions constitute an after-acquired footnote to one of the most important statements in the dissenting opinion of Mr. Justice Brandeis—and emphasize to what an extent that opinion understated the evil. He said:

> ". . . Whenever a telephone line is tapped, the privacy of the persons at both ends of the line is invaded and all conversations between them upon any subject, and although proper, confidential and privileged, may be overheard. Moreover, the tapping of one man's telephone line involves the tapping of the telephone of every other person whom he may call or who may call him. As a means of espionage, writs of

[8] Hearings on S. 1253, before subcommittee of Committee on Interstate Commerce, U. S. Senate, 77th Cong., 1st Sess., 1941; Hearings pursuant to S. Res. 224, before subcommittee of Committee on Interstate Commerce, U. S. Senate, 76th Cong., 3rd Sess., 1940-1941; Hearings on nomination of Francis Biddle as Attorney General, before subcommittee of Committee on the Judiciary, U. S. Senate, 77th Cong., 1st Sess., 1941, not printed; see also New York PM, Sept. 4, 1941, pp. 12-13. Hearings on H. R. 2266, before Subcommittee No. 1 of Committee on the Judiciary, U. S. House of Representatives, 77th Cong., 1st Sess., 1941.

[9] Senate Report No. 1304, 76th Cong., 3rd Sess., Mar. 12, 1940 and unnumbered report of subcommittee of Committee on Interstate Commerce, pursuant to S. Res. 224, 77th Cong., 1st Sess., to Chairman, July 22, 1941.

[10] Debate on H. R. 2266, 87 Cong. Rec., unbound, 5877-5912, *passim*, 77th Cong., 1st Sess., June 30, 1941. It was also briefly debated on Aug. 6, 1940, 86 Cong. Rec., unbound, 15194-15198, 76th Cong., 3rd Sess.

assistance and general warrants are but puny instruments of tyranny and oppression when compared with wire-tapping."

The same observation may be made with reference to the interception of non-telephonic conversation. While the device is in use, all sounds within a given radius will be heard and recorded. When the vicinity of the detectaphone is frequented by others than the intended victim, they automatically become unintended victims.

In support of Mr. Justice Brandeis and the present Chief Justice, this Court can turn to its own records. The interceptors whose work the Court condemned in *Weiss* v. *United States*, 308 U. S. 321 (1939), made mechanical recordings of thousands of conversations. Record on appeal, pp. 74-83. And those whose work the Court nullified in *Nardone* v. *United States*, 302 U. S. 379 (1937), tapped the wires of public telephone booths in a large New York City hotel and listened to thousands of conversations, only 85 of which they found useful or worth recording. Record on appeal, p. 186.

Witness after witness appearing before Subcommittee No. 1 of the House Judiciary Committee testified on this point.[11] Nor did any witness who urged the legalization of mechanized interception deny that it entrains a dragnet spying on innocent and unsuspected persons, or present any contrary testimony on this point.

(2) Mechanized interception is not so necessary, so useful or even (from the viewpoint of police authorities) so desirable in the detection of crime as to constitute justification for the searches and seizures effected thereby, whether

[11] Hearings on H. R. 2266, *supra* note 8, at pp. 51, 62, 76, 82, 92, 101-103, 162-164, 176, 183, 210, 215, 231-233. Testimony taken by the House Judiciary Committee, subsequent to the hearings before its Subcommittee No. 1, was not recorded and is therefore not available for citation. Press reports of the testimony, on this point, of the Chairman of the Federal Communications Commission and Defense Communications Board, may be found in St. Louis Post-Dispatch and Baltimore Sun of March 26, 1941.

against unsuspected persons, those suspected but innocent, or those who are guilty.

Undoubtedly, in isolated cases, evidence of guilt can be secured by means of mechanized interception. There may even be cases where such evidence would not be otherwise obtainable. But, viewing crime detection in general, one finds that such interception does not serve its avowed purpose of catching criminals. This is particularly important since the practice serves other purposes, of an altogether different nature.

As to the utility of this investigative technique, reference may be made to two illustrative items appearing in the testimony before the House Judiciary Subcommittee on the 1941 bill to legalize wire-tapping. One item is the statement of J. Edgar Hoover on February 9, 1940, after he had served as head of the Bureau of Investigation for 16 years. He declared that such mechanized interception is an "archaic and inefficient" practice which "has proved a definite handicap or barrier in the development of ethical, scientific, and sound investigative technique."[12]

With special reference to the question of the utility of the practice in the apprehension of spies and saboteurs, there was testimony before the House subcommittee by a man who had served several government departments during the World War that it was completely ineffectual:[13]

> "In all of the espionage cases—and I kept up with them during the war—I do not recall a single lead or a single spy trapped through telephone tapping. . . . I do not recall a single instance—and Mr. Holtzoff can correct me if I am wrong—where they found any spying work, any sabotage in the last war as a result of using a procedure of this kind."

Mr. Alexander Holtzoff, who attended the hearings as a representative of the Department of Justice, did not con-

[12] Wire Tapping and Law Enforcement, 53 Harv. L. Rev. 863, 870*n* (1940).

[13] *Supra* note 11, p. 168.

tradict this statement. Indeed, when Representative Barnes asked Mr. Holtzoff for information as to the utility of the practice in espionage and sabotage cases during the last war, the reply was, "I do not know. I have no general idea." Representative Barnes declared:[14]

> "We had a similar situation facing the country to the one we have now, only the next step further, and in the midst of that very proceeding, or situation, wire tapping was prohibited; therefore the conclusion must have been that it was not an effective means of running down saboteurs and the like, and helping the Government ferret out those types of individuals."

No facts were introduced to shake this conclusion.[15]

(3) Serious abuses are inherent in the use of such devices, even by the police.

A formal statement by the Department of Justice on March 15, 1940, stated that[16]

> ". . . the discredit and suspicion of the law-enforcing branch which arises from the occasional use of wire tapping more than offsets the good which is likely to come to it. . . ."

The same statement quoted Mr. Hoover as follows:

> "While I concede that the telephone tap is from time to time of limited value in the criminal investigative field, I frankly and sincerely believe that if a statute of this kind were enacted the abuses arising therefrom would far outweigh the value which might accrue to law-enforcement as a whole."

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[14] *Ibid.*, p. 242.

[15] A study of the reported cases, both federal and state, reveals not a single case of apprehension of a spy or a saboteur through the use of mechanized interception. The ineffectuality of the practice was testified to by several witnesses before the subcommittee. *Ibid.*, pp. 152, 166, 168, 184.

[16] *Ibid.*, pp. 223-224.

The testimony before the House Judiciary subcommittee includes the text of an interview with Mr. Hoover, reporting his view that any considerable resort to this practice would make crooks out of his detectives in no time.[17]

The testimony in the Judiciary Committee hearings points to some of the abuses incident to mechanized interception—abuses which may even be the principal end served thereby.[18]

(4) Mechanized interception is a favorite political weapon.

There was testimony before the subcommittee that, with the institution of mechanized interception as a lawful police technique, incumbent administrations would use the practice against political parties and individuals of the opposition—and that politicians would use it against each other to obtain material for mud-slinging campaigns.[19] That these are not idle fears is borne out by the record.

Detectives employed by the Governor of Rhode Island have tapped the wires of the attorney general of that state and of the mayor of one of its cities.[20] Mechanized interception has been used against Democratic Party leaders in Philadelphia.[21] Microphones have been planted in the office of the Governor of Colorado[22] and the bedroom of the Speaker of the California Assembly.[23]

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[17] *Ibid.*, p. 68.

[18] *Ibid.*, pp. 34, 48, 59, 65, 76-97, 101, 115, 133-134, 164, 176, 200-201, 214-217, 223, 230.

[19] *Ibid.*, p. 113 *et seq.*

[20] Hearings on wire tapping, pursuant to S. Res. 224, before a subcommittee of the Senate Committee on Interstate Commerce, 76th Cong., 3rd Sess., 1940, Part 1, pp. 3-31. For a somewhat similar incident involving a Governor of Pennsylvania, see Baltimore Sun, Aug. 2, 1937, p. 1, cols. 4-5.

[21] *Ibid.*, pp. 63-82.

[22] Reported in *Editor and Publisher*, Jan. 29, 1938; see also statement of U. S. Senator Edwin C. Johnson reported in Washington Post, Mar. 17, 1940.

[23] Reported in San Francisco Examiner, Mar. 6 and 8, 1940.

(5) Mechanized interception is one of the established methods of anti-labor spying.

In August, 1941, government agents installed a microphone in the room of a labor leader and overheard conversations between him and other labor leaders.[24] Hearings conducted by the National Labor Relations Board have revealed the use of wire-tapping against employees of the Dallas plant of the Ford Motor Company[25] and against the Oil Workers International Union.[26] The files of the Federal Communications Commission record the use of a microphone against the Teamsters Union in California.[27] An affidavit filed with the LaFollette Committee charges tapping of the wires of the Automobile Workers Union and its president.[28] The record of that committee also shows the use of detectaphones against Remington Rand strikers[29] and demonstrates that detectaphones and other intercepting devices are sold by the salesmen of tear gas, the other notorious anti-labor commodity.[30]

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[24] *Supra* note 2; see also New York PM, Aug. 25, 26, 28 and 29, 1941.

[25] Report of National Labor Relations Board Trial Examiner in *Ford Motor Co. v. International Union of United Automobile Workers, et al.* (1940); see also N. Y. World-Telegram, Apr. 20, 1940, p. 2, col. 2.

[26] Hearings before National Labor Relations Board in *Midcontinent Petroleum Company v. Oil Workers International Union* (1940); see also 86 Cong. Rec., unbound, 4759-4761, 76th Cong., 3rd Sess., Mar. 19, 1940; Tulsa Daily World, Mar. 28, 29 and 31, 1940.

[27] Hearings on Violations of Free Speech and Rights of Labor, pursuant to S. Res. 266, before a subcommittee of the Senate Committee on Education and Labor, U. S. Senate, 76th Cong., 3rd Sess., Part 58, 1940, pp. 21446, 21448-21449, 21666-21667. The microphone was connected to a radio transmitter which broadcast the intercepted words to the receiving apparatus of the eavesdropper and to anyone else who happened to tune in on that frequency. The interception was discovered when a third party, who accidentally tuned in on the proper frequency, notified both the victim and the Federal Communications Commission.

[28] *Ibid*, Part 6, 1937, p. 2106.

[29] *Ibid.*, Part 8, 1937, pp. 2734, 2736.

[30] *Ibid.*, Part 2, 1936, pp. 434-435.

These examples, perhaps, are sufficient reason for the fear of and opposition to wire-tapping expressed by organized labor. The legalization of the practice in any form and with whatever "safeguards" could be devised was vehemently opposed in the hearings by a solid bloc of unions consisting of the American Federation of Labor,[31] the Congress of Industrial Organizations,[32] and the Railroad Brotherhoods.[33]

(6) Mechanized interception is a grave obstacle to the proper conduct of the affairs of professional and business men. Testimony before the House subcommittee, by men drawn from the bar and the business world, clearly states what they conceive to be the dangers to them.[34] Their experience justifies their apprehensions.

A member of the bar testified:[35]

> "If any agency wanted to detect crime, and wanted to get information which would be useful in detecting that crime, why do they not tap the wires where there is a conversation between a lawyer and his client, and why do they not put a dictaphone in jail where the lawyer is consulting his client? There they would get the absolute information revealed by the client to his lawyer. But, no, our conscience is shocked at that."

Consciences are not always troublesome, however, for in Washington, D. C., the conversation of an attorney with an arrested client, held in a prison cell, was intercepted by police who had placed a dictograph in the cell.[36] Two men

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[31] *Supra* note 11, p. 34 *et seq.*

[32] *Ibid.*, pp. 75 *et seq.*, 84 *et seq.*, 177 *et seq.*

[33] *Ibid.*, pp. 90 *et seq.*, 100 *et seq.*

[34] *Ibid.*, pp. 35 *et seq.*, 151 *et seq.*, 228 *et seq.*

[35] *Ibid.*, p. 45.

[36] Washington Post, Dec. 8, 1940, p. 8, col. 1.

The protection afforded by the law to confidential communications which pass between lawyer and client is rendered comparatively valueless if the law is to permit the mechanized interceptor to intervene, for the privilege does not bar the testimony of third persons. *U. S. v. Olmstead*, 7 Fed. (2nd) 760, 763 (D. C. Wash. 1925).

have recently been indicted by a grand jury for placing a dictograph in a room used for conferences by a rival business organization.[37] Some years ago, the telephones of an association of milk producers in Ohio were tapped in the course of a "price war".[38] A public utility company subjected to mechanized intereeption the attorneys of its opponents in a lawsuit.[39] In New York, two attorneys were indicted on a charge of tapping the wires of opposing counsel.[40]

(7) The prevalence of mechanized interception may constitute a threat to the defense of the country.

Numerous witnesses before the House subcommittee described the dangers to defense inherent in the practice and recalled that, during the last war, Congress had found it necessary to enact a law [41] absolutely forbidding it.[42] According to reports in responsible journals, the Chairman of the Federal Communications Commission and the Defense Communications Board testified in executive session before the House Judiciary Committee in March 1941 that the use of mechanized interception hinders and endangers the national defense program.[43] The result of the practice, he said, is that officers engaged in the national defense must virtually forego the use of the telephone lest vital secrets

[37] N. Y. Times, Dec. 6, 1941, p. 19, col. 7.

[38] N. Y. Times, Sept. 25, 1932, p. 2, col. 2.

[39] Hearings, *supra* note 20, Part 3, 1941, pp. 1009-1049, 1054-1061.

[40] N. Y. Times, Jan. 26, 1939, p. 14, col. 5; Feb. 1, 1939, p. 2, col. 2; Feb. 8, 1939, p. 2, col. 2.

[41] 40 Stat. 1017 (1918).

[42] *Supra* note 11, pp. 61-62, 77, 79, 87-88, 145, 146, 183-184.

[43] The testimony of Chairman Fly was not printed in the record, but it was reported by the press. See articles by Paul Ward, Baltimore Sun, Mar. 26, 1941; T. L. Stokes, Scripps-Howard newspapers, Mar. 27, 1941; M. W. Childs, St. Louis Post-Dispatch, Mar. 26, 1941; Nathan Robertson, New York PM, Mar. 27, 1941.

fall into the hands of unauthorized federal agents.[44] He pointed out, also, the existence of a Navy Department regulation warning naval officers to be careful in using telephones. His testimony also recalled the Congressional prohibition of wire-tapping during the last war.

In a letter on March 27, 1941,[45] the Chairman of the Interstate Commerce Commission quoted the Commission's Director of the Bureau of Safety as follows:

> "The railroads use telephone and telegraph wires for the transmission of train orders. This constitutes the most important method of communication for directing the movement of trains accurately, safely and promptly. These wires vary in the effectiveness of operation and performance, depending upon construction and maintenance. Any additional connection of a wire-tapping character to a dispatching circuit would form a source of possible trouble which might interfere with proper transmission and receipt of orders, which in turn may lead to traffic delay and congestion, and resulting hazards."

The executive secretary-treasurer of the Railway Labor Executives Association, for many years a train dispatcher and president of the Train Dispatchers' Association, told the same subcommittee that the mechanical interference with the 1,200,000 miles of railroad communication wires

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[44] See *United States* v. *Gruber*, 39 Fed. Supp. 291 (S. D. N. Y. 1941), involving the tapping of wires of the Securities and Exchange Commission.

The Associate Director of the Office of Production Management told a committee investigating the national defense program:

> "* * * the biggest part of our business is done on the telephone, both with the services and between the Departments themselves. I have a private line to Secretary Knox and Secretary Stimson right in my office; all I have to do is lift up the telephone and talk to them * * *". (Hearings before Special Committee Investigating the National Defense Program, pursuant to S. Res. 71, U. S. Senate, 77th Cong., 1st Sess., 1941, Part 1, p. 107.)

[45] This letter was placed on file in hearings before the House Rules Committee on H. R. 2266, 77th Cong., 1st Sess., 1941.

which is produced by the use of intercepting devices may "cause loss of lives or train wrecks. No one intent on committing sabotage could do a worse act." [46] He pointed out, also, that the railroad communication wires are interconnected with the commercial lines and are likely to be affected by interference at any point.[47] The Telegraph and Telephone Section of the Association of American Railroads recently announced that the telephone is rapidly supplanting the telegraph in rail traffic control because of the transmission of messages "with greater ease and in less time." [48] The Association's director of public relations has announced the "need to guard all of our lines of communication with particular care during the present emergency . . . because misuse of the various forms of communication can produce serious and sometimes tragic results." [49] The Chairman of the Association's Telegraph and Telephone Section declared that "fast and adequate communication is more imperative today than ever" and he called for "the prevention of every delay possible." [50]

Even in the absence of many of the foregoing facts this Court thrice condemned mechanized interception. *Nardone* v. *United States*, 302 U. S. 379 (1937); *Weiss* v. *United States*, 308 U. S. 321 (1939); *Nardone* v. *United States*, 308 U. S. 338 (1939).

This decision in the first *Nardone* case, *supra*, was characterized by the Court, through the opinion of Mr. Justice Frankfurter in the second *Nardone* case, as "not the product of a merely meticulous reading of technical language", but rather "the translation into practicality of broad considerations of morality and public well-being." 308 U. S. 321, 340.

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[46] *Supra* note 11, pp. 91-92.

[47] *Ibid.*, pp. 98-99.

[48] Fairmont *Times-West Virginian*, Oct. 12, 1941.

[49] N. Y. Journal of Commerce, Sept. 24, 1941.

[50] *Id.*

The force of the foregoing facts, it is submitted, is such as to call for a reexamination of the question of constitutionality of mechanized interception and the overruling of the majority decision in *Olmstead* v. *United States*, *supra*.

The meaning of the Fourth and Fifth Amendments was thus expressed by Mr. Justice Brandeis in his dissent in the *Olmstead* case:

> ". . . The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment. And the use, as evidence in a criminal proceeding, of facts ascertained by such intrusion must be deemed a violation of the Fifth." 277 U. S. 438, 478-479.

The decision below is based upon a finding that no trespass was involved in the use of the detectaphone (*United States* v. *Goldman*, 118 Fed. [2d] 310, 314 [C. C. A. 2, 1941]) and the government relies upon this finding in its claim that there was no search within the meaning of the Fourth Amendment. Brief in opposition to Petition for Certiorari, pages 7-8. This Court has already held, however, that trespass, though it may be an aggravating circumstance, is not a necessary component of illegal search. In *Boyd* v. *United States*, 116 U. S. 616 (1886), a statute requiring production of documents, under a sanction that the government's assertions as to their contents would otherwise be taken as confessed, was called "the obnoxious thing in its mildest and least repulsive form" (page 635). None the less, it was

held unconstitutional as an illegal search and seizure. Though there was no physical entry or actual search and seizure, the statute accomplished the effect of "forcing from a party evidence against himself." Page 622. Speaking of the opinion of Lord Camden in *Entick* v. *Carrington*, 19 Howell's State Trials 1030, Mr. Justice Bradley said, at page 630:

> "The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court, with its adventitious circumstances; they apply to all invasions on the part of the government and its employes of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence,—it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment. Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other."

The above language was quoted with approval by Mr. Justice Brandeis in the *Olmstead* case, *supra*, at pages 474-475. What the Court condemns is the element of compulsion, compulsion which need not be physical. Is the case less grave where information is obtained by means of a detectaphone than where it is ordered produced under a sanction? It may be said that if the search in the *Boyd* case was "the obnoxious thing in its mildest and least repulsive form", in the case at bar it is the obnoxious thing in a virulent and repulsive form.

The Court has also held that a search and seizure are unconstitutional where accomplished "by stealth instead of by force or coercion". *Gouled* v. *United States*, 255 U. S. 298, 305 (1921).

It is submitted that there are no grounds upon which the procedure of the officers in this case can be distinguished from an unconstitutional search and seizure. The notion sometimes expressed that searching is a function of the sense of sight [51] has been adequately dispelled. *Nueslein* v. *District of Columbia*, 115 Fed. (2nd) 690 (App. D. C. 1940), held that the defendant's statements to officers illegally on his premises were inadmissible under the Fourth and Fifth Amendments. Nor can it be maintained that only tangible and concrete things are protected against seizure. In the *Nueslein* case, *supra*, as in the case at bar, the officers seized spoken words. Mr. Justice Brandeis pointed out in the *Olmstead* case, *supra*, that the Fourth Amendment is violated by the reading of a paper "without a physical seizure, without his even touching it; and that use, in any criminal proceeding, of the contents of the paper so examined . . . constitutes a violation of the Fifth Amendment." Page 478. See also *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385 (1920).

CONCLUSION.

It is respectfully submitted that this Court should hold that the interception of communications, telephonic or non-telephonic, by means of wire-tapping, detectaphones, microphones, dictaphones, dictographs, induction coils, or any other such device, is a violation of the Fourth Amendment and that any use of information thus obtained in any judicial proceeding is a violation of the Fifth Amendment.

THOMAS H. ELIOT,
Amicus Curiae.

January 14, 1942.

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[51] 56 C. J. 1154.

Op. 2 - 4 Dissent 1

SUPREME COURT OF THE UNITED STATES.

Nos. 962, 963, 980.—October Term, 1940.

962 Martin M. Goldman, Petitioner, *vs.* The United States of America.

963 Jacob P. Shulman, Petitioner, *vs.* The United States of America.

980 Theodore Goldman, Petitioner, *vs.* The United States of America.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 27, 1942.]

Mr. Justice Roberts delivered the opinion of the Court.

The petitioners and another were indicted for conspiracy[1] to violate § 29(b)(5) of the Bankruptcy Act[2] by receiving, or attempting to obtain, money for acting, or forbearing to act, in a bankruptcy proceeding. They were convicted and sentenced and the judgments were affirmed by the Circuit Court of Appeals.[3] The facts are fully stated in the opinion below and we shall advert only to those essential to an understanding of the questions open in this court.

The petitioners were lawyers. One of them, Martin Goldman, approached Hoffman, the attorney representing an assignee for the benefit of creditors, with the proposition that the assignee sell the assets in bulk for an ostensible price which would net the creditors a certain dividend, but in fact at a secret greater price, and that Hoffman and the petitioners should divide the difference between them. Hoffman refused. Shulman, one of the petitioners, then filed an involuntary petition in bankruptcy against the assignor in such form that it could be dismissed on motion and with-

[1] Criminal Code § 37; 18 U. S. C. § 88.
[2] 11 U. S. C. § 52(b)(5).
[3] 118 F. 2d 310.

out notice; and obtained a stay of the assignee's sale. The bankruptcy court refused to revoke the stay and Shulman again approached Hoffman stating that, if he agreed to the proposed arrangement, the bankruptcy petition could be dismissed and the plan consummated. Hoffman said he would agree, but he went at once to the referee and disclosed the scheme. A federal investigator was consulted and it was arranged that Hoffman should continue to negotiate with the petitioners. He did so. Numerous conferences were had and the necessary papers drawn and steps taken. Success was frustrated only by the refusal of a creditor to release for the offered percentage of his claim.

Meantime, two federal agents, with the assistance of the building superintendent, obtained access at night to Shulman's office and to the adjoining one and installed a ~~dictaphone~~ apparatus in a small aperture in the partition wall with a wire to be attached to earphones extending into the adjoining office. This was for the purpose of overhearing a conference with Hoffman set for the following afternoon. The next afternoon, one of the agents returned to the adjoining room with two others and a stenographer. They connected the earphones to the ~~dictaphone~~ but it would not work. They had with them another device, a detectaphone having a receiver so delicate as, when placed against the partition wall, to pick up sound waves originating in Shulman's office, and means for amplifying and hearing them. With this ~~apparatus~~ the agents overheard, and the stenographer transcribed, portions of conversations between Hoffman, Shulman, and Martin Goldman on several occasions, and also heard what Shulman said when talking over the telephone from his office.

Before the trial Shulman learned the facts and made a motion, in which the other petitioners joined, to suppress the evidence thus obtained. A preliminary hearing was had and the motion was denied. At the trial the evidence was admitted over objection that its receipt violated the Fourth Amendment of the Constitution and, as respects Shulman's talk into the telephone receiver, violated also § 605 of the Federal Communications Act.[4]

At the preliminary hearing, and at the trial, counsel for petitioners demanded that they be permitted to inspect the notes and memoranda made by the agents during the investigation, the agents having admitted they had refreshed their recollection from

[4] Act of June 19, 1934, 48 Stat. 1064, 1103; 47 U. S. C. § 605.

these papers prior to testifying. The trial judge ruled that the papers need not be exhibited by the witnesses.

1. We hold there was no error in denying the inspection of the witnesses' memoranda. The judge was clearly right in his ruling at the preliminary hearing, as the petitioners should not have had access, prior to trial, to material constituting a substantial portion of the Government's case.

We think it the better rule that where a witness does not use his notes or memoranda in court, a party has no absolute right to have them produced and to inspect them. Where, as here, they are not only the witness' notes but are also part of the Government's files, a large discretion must be allowed the trial judge. We are unwilling to hold that the discretion was abused in this case.

2. We hold that the overhearing and divulgence of what Shulman said into a telephone receiver was not a violation of Section 605.

The petitioners contend that a communication falls within the protection of the statute once a speaker has uttered words with the intent that they constitute a transmission of a telephone conversation. The validity of the contention must be tested by the terms of the Act fairly construed. So considered, there was neither a "communication" nor an "interception" within the meaning of the Act. The protection intended and afforded by the statute is of the means of communication and not of the secrecy of the conversation. Section 3 embodies the following definition:[5]

"(a) 'Wire communication' or 'communication by wire' means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission."

What is protected is the message itself throughout the course of its transmission by the instrumentality or agency of transmission.[6] Words written by a person and intended ultimately to be carried as so written to a telegraph office do not constitute a communication within the terms of the Act until they are handed to an agent of the telegraph company. Words spoken in a room in the pres-

[5] 47 U. S. C. § 153.

[6] Compare Diamond v. United States, 108 F. 2d 859, 860; United States v. Polakoff, 112 F. 2d 888, 890.

ence of another into a telephone receiver do not constitute a communication by wire within the meaning of the section. Letters deposited in the Post Office are protected from examination by federal statute,[7] but it could not rightly be claimed that the office carbon of such letter, or indeed the letter itself before it has left the office of the sender, comes within the protection of the statute. The same view of the scope of the Communications Act follows from the natural meaning of the term "intercept". As has rightly been held, this word indicates the taking or seizure by the way or before arrival at the destined place. It does not ordinarily connote the obtaining of what is to be sent before, or at the moment, it leaves the possession of the proposed sender, or after, or at the moment, it comes into the possession of the intended receiver.[8] The listening in the next room to the words of Shulman as he talked into the telephone receiver was no more the interception of a wire communication, within the meaning of the Act, than would have been the overhearing of the conversation by one sitting in the same room.

3. We hold that what was heard by the use of the detectaphone was not made illegal by trespass or unlawful entry.

The petitioners' contend that the trespass committed in Shulman's office when the ~~dictaphone~~ was there installed, and what was learned as the result of that trespass, was of some assistance on the following day in locating the receiver of the detectaphone in the adjoining office and this connection between the trespass and the listening resulted in a violation of the Fourth Amendment. Whatever trespass was committed was connected with the installation of the ~~dictaphone~~. As respects ~~the dictaphone~~, the trespass might be said to be continuing and, if the ~~dictaphone~~ had been used it might, with reason, be claimed that the continuing trespass was the concomitant of its use. On the other hand, the relation between the trespass and the use of the detectaphone was that of antecedent and consequent. Both courts below have found that the trespass did not aid materially in the use of the detectaphone. Since we accept these concurrent findings, we need not consider a contention based on a denial of their verity.

4. We hold that the use of the detectaphone by Government agents was not a violation of the Fourth Amendment.

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[7] Ex parte Jackson, 96 U. S. 727.

[8] United States v. Yee Ping Jong, 26 F. Supp. 69, 71.

In asking us to hold that the information obtained was obtained in violation of the Fourth Amendment, and that its use at the trial was, therefore, banned by the Amendment, the petitioners recognize that they must reckon with our decision in *Olmstead* v. *United States*, 277 U. S. 438. They argue that the case may be distinguished. The suggested ground of distinction is that the *Olmstead* case dealt with the tapping of telephone wires, and the court adverted to the fact that, in using a telephone, the speaker projects his voice beyond the confines of his home or office and, therefore, assumes the risk that his message may be intercepted. It is urged that where, as in the present case, one talks in his own office, and intends his conversation to be confined within the four walls of the room, he does not intend his voice shall go beyond those walls and it is not to be assumed he takes the risk of someone's use of a delicate detector in the next room. We think, however, the distinction is too nice for practical application of the Constitutional guarantee and no reasonable or logical distinction can be drawn between what federal agents did in the present case and state officers did in the *Olmstead* case.

The petitioners ask us, if we are unable to distinguish *Olmstead* v. *United States*, to overrule it. This we are unwilling to do. That case was the subject of prolonged consideration by this court. The views of the court, and of the dissenting justices, were expressed clearly and at length. To rehearse and reappraise the arguments pro and con, and the conflicting views exhibited in the opinions, would serve no good purpose. Nothing now can be profitably added to what was there said. It suffices to say that we adhere to the opinion there expressed.

The judgments are affirmed.

Mr. Chief Justice Stone and Mr. Justice Frankfurter:

Had a majority of the Court been willing at this time to overrule the *Olmstead* case, we should have been happy to join them. But as they have declined to do so, and as we think this case is indistinguishable in principle from *Olmstead's*, we have no occasion to repeat here the dissenting views in that case with which we agree.

Mr. Justice Jackson took no part in the consideration or decision of these cases.

SUPREME COURT OF THE UNITED STATES.

Nos. 962, 963, and 980.—October Term, 1940.

Martin M. Goldman, Petitioner, 962 *vs.* The United States of America. Jacob P. Shulman, Petitioner, 963 *vs.* The United States of America. Theodore Goldman, Petitioner, 980 *vs.* The United States of America.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 27, 1942.]

Mr. Justice Murphy, dissenting.

I cannot agree for to me it is clear that the use of the detectaphone under the circumstances revealed by this record was an unreasonable search and seizure within the clear intendment of the Fourth Amendment.

One of the great boons secured to the inhabitants of this country by the Bill of Rights is the right of personal privacy guaranteed by the Fourth Amendment. In numerous ways the law protects the individual against unwarranted intrusions by others into his private affairs.[1] It compensates him for trespass on his property or against his person. It prohibits the publication against his will of his thoughts, sentiments, and emotions regardless of whether those are expressed in words, painting, sculpture, music, or in other modes.[2] It may prohibit the use of his photograph for commercial purposes without his consent.[3] These are restrictions on the activi-

[1] See generally Brandeis and Warren, "The Right to Privacy", 4 Harv. L. Rev. 193 (1890).

[2] *Ibid.*, pp. 198-199.

[3] See Pavesich *v.* New England Life Ins. Co., 122 Ga. 190, 50 S. E. 68; Bazemore *v.* Savannah Hospital, 171 Ga. 257, 155 S. E. 194; Kunz *v.* Allen, 102 Kan. 883, 172 P. 532; Foster-Millburn *v.* Chinn, 134 Ky. 424, 120 S. W. 364; Munden *v.* Harris, 153 Mo. A. 652, 134 S. W. 1076; Flake *v.* Greensboro News Co., 212 N. C. 780, 195 S. E. 55; Holloman *v.* Life Ins. Co. of

ties of private persons. But the Fourth Amendment puts a restraint on the arm of the Government itself and prevents it from invading the sanctity of a man's home or his private quarters in a chase for a suspect except under safeguards calculated to prevent oppression and abuse of authority.

On the value of the right to privacy, as dear as any to free men, little can or need be added to what was said in *Entick* v. *Carrington*, 19 How. St. Tr. 1030, *Boyd* v. *United States*, 116 U. S. 616, and Justice Brandeis' memorable dissent in *Olmstead* v. *United States*, 277 U. S. 438, 471. Suffice it to say that the spiritual freedom of the individual depends in no small measure upon the preservation of that right. Insistence on its retention does not mean that a person has anything to conceal, but means rather that the choice should be his as to what he wishes to reveal, saving only to the Government the right to seek out crime under a procedure with suitable safeguards for the protection of individual rights, such as the warrant whose requisites are set forth in the Fourth Amendment.

It will be conceded that if the language of the Amendment were given only a literal construction, it might not fit the case now presented for review. The petitioners were not physically searched. Their homes were not entered. Their files were not ransacked. Their papers and effects were not disturbed. But it has not been the rule or practice of this Court to permit the scope and operation of broad principles ordained by the Constitution to be restricted, by a literal reading of its provisions, to those evils and phenomena that were contemporary with its framing. Cf. *Weems* v. *United States*, 217 U. S. 349, 373; *United States* v. *Classic*, 313 U. S. 299, 316.

The conditions of modern life have greatly expanded the range and character of those activities which require protection from intrusive action by Government officials if men and women are to enjoy the full benefit of that privacy which the Fourth Amendment was intended to provide. It is our duty to see that this historic provision receives a construction sufficiently liberal and elastic to make it serve the needs and manners of each succeeding generation. Cf. *Grau* v. *United States*, 287 U. S. 124, 128, and cases cited. Otherwise it may become obsolete, incapable of providing the peo-

Virginia, 192 S. C. 454, 7 S. E. 2d 169. Cf. Henry v. Cherry & Webb, 30 R. I. 13, 73 A. 97; Hillman v. Star Publishing Co., 64 Wash. 691, 117 P. 594; Atkinson v. John E. Doherty & Co., 121 Mich. 372, 80 N. W. 285; Jones v. Herald Post Co., 230 Ky. 227, 18 S. W. 2d 972; O'Brien v. Pabst Sales Co., 124 F. 2d 167. See also § 51 of the New York Civil Rights Law.

ple of this land adequate protection. To this end we must give mind not merely to the exact words of the Amendment but also to its historic purpose, its high political character, and its modern social and legal implications.

With the passing of the years since 1787 marked changes have ensued in the ways of conducting business and personal affairs. Many transactions of a business or personal character that in the eighteenth century were conducted at home are now carried on in business offices away from the home. If the method and habits of the people in 1787 with respect to the conduct of their private business had been what they are today, is it possible to think that the framers of the Bill of Rights would have been any less solicitous of the privacy of transactions conducted in the office of a lawyer, a doctor, or a man of business, than they were of a person's papers and effects?[4]

There was no physical entry in this case. But the search of one's home or office no longer requires physical entry, for science has brought forth far more effective devices for the invasion of a person's privacy than the direct and obvious methods of oppression which were detested by our forebears and which inspired the Fourth Amendment.[5] Surely the spirit motivating the framers of that Amendment would abhor these new devices no less. Physical entry may be wholly immaterial.[6] Whether the search of private quarters is accomplished by placing on the outer walls of the sanctum a detectaphone that transmits to the outside listener the intimate details of a private conversation, or by new methods of photography that penetrate walls or overcome distances, the privacy

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[4] Papers taken from an office in the course of an unreasonable search are taken in violation of the Fourth Amendment. Silverthorne Lumber Co. *v.* United States, 251 U. S. 385; Gouled *v.* United States, 255 U. S. 298; Go-Bart Importing Co. *v.* United States, 282 U. S. 344; United States *v.* Lefkowitz, 285 U. S. 452.

[5] Those devices were the general warrants, the writs of assistance and the lettres de cachet.

On the subject of the general warrant see Entick *v.* Carrington, 19 How. St. Tr. 1030, and May, Constitutional History of England (2d ed.), vol. III, pp. 1-10.

For an account of the writs of assistance see Quincy (Mass.) 51 (1761) and Gray's appendix to Quincy's Reports. See also Tudor, James Otis, p. 66, and John Adams, Works, vol. II, p. 524.

The lettres de cachet are discussed in Chassaigne, Les Lettres de Cachet sous L'ancien Regime (Paris, 1903).

[6] "It is not the breaking of his [man's] doors and the rummaging of his drawers that constitutes the essence of the offense"—those are but "circumstances of aggravation". Boyd *v.* United States, 116 U. S. 616, 630.

of the citizen is equally invaded by agents of the Government and intimate personal matters are laid bare to view. Such invasions of privacy, unless they are authorized by a warrant issued in the manner and form prescribed by the Amendment or otherwise conducted under adequate safeguards defined by statute, are at one with the evils which have heretofore been held to be within the Fourth Amendment and equally call for remedial action.[7]

On the basis of the narrow, literal construction of the search and seizure clause of the Fourth Amendment adopted in *Olmstead* v. *United States*, 277 U. S. 438,[8] Government officials could well believe that activities of the character here involved did not contravene the Constitutional mandate. But for my part, I think that the *Olmstead* case was wrong. The error of the stultifying construction there adopted is best shown by the results to which it leads. It is strange doctrine that keeps inviolate the most mundane observations entrusted to the permanence of paper but allows the revelation of thoughts uttered within the sanctity of private quarters, thoughts perhaps too intimate to be set down even in a secret diary, or indeed, utterances about which the common law drew the cloak of privilege—the most confidential revelations between hus-

[7] A warrant can be devised which would permit the use of a detectaphone. Cf. Article 1, Section 12 of the New York Constitution (1938). And, while a search warrant, with its procedural safeguards has generally been regarded as prerequisite to the reasonableness of a search in those areas of essential privacy, such as the home, to which the Fourth Amendment applies (see Agnello v. United States, 269 U. S. 20, 32), some method of responsible administrative supervision could be evolved for the use of the detectaphone which, like the valid search warrant, would adequately protect the privacy of the individual against irresponsible and indiscriminate intrusions by Government officers. See Wigmore, Evidence (3d ed.), vol. 8, sec. 2184b, pp. 51-2.

While the detectaphone is primarily used to obtain evidence, and while such use appears to be condemned by the rulings of this Court in Gouled v. United States, 255 U. S. 298, and United States v. Lefkowitz, 285 U. S. 452, I am not prepared to say that this purpose necessarily makes all detectaphone "searches" unreasonable, no matter what the circumstances, or the procedural safeguards employed. Cf. United States v. Marron, 275 U. S. 192. See Wigmore, Evidence (3d ed.), vol. 8, secs. 2251, 2264; 31 Yale L. J. 518, 522; Chafee, Progress of the Law, 1919-1922, 35 Harv. L. Rev. 673, 699; 32 Col. L. Rev. 386; Cooley, Constitutional Limitations (8th ed.), vol. 1, p. 625.

[8] The Olmstead case limits the search and seizure clause to "an official search and seizure of his [defendant's] person or such a seizure of his papers or his tangible material effects, or an actual physical invasion of his house 'or curtilage' for the purpose of making a seizure." 277 U. S. 438, 466.

The decisions of this Court prior to the Olmstead case insisted on a liberal construction of the Fourth Amendment and placed within its compass activities bearing slight, if any, resemblance to the mischiefs known at the time of its adoption. See Boyd v. United States, 116 U. S. 616; Silverthorne Lumber Co. v. United States, 251 U. S. 385; Gouled v. United States, 255 U. S. 298.

band and wife, client and lawyer, patient and physician, and penitent and spiritual adviser. Nor can I see any rational basis for denying to the modern means of communication the same protection that is extended by the Amendment to the sealed letter in the mails. See *Ex parte Jackson*, 96 U. S. 727. Officers conducting an unreasonable search are seeking evidence as such; the form it takes is of no concern to them.

But even if *Olmstead's* case is to stand, it does not govern the present case. It was not the intention of petitioners to project their conversations beyond the walls of petitioner Shulman's private office.[9] Whatever may be said of a wire-tapping device that permits an outside telephone conversation to be overheard, it can hardly be doubted that the application of a detectaphone to the walls of a home or a private office constitutes a direct invasion of the privacy of the occupant, and a search of his private quarters.

The circumstance that petitioners were obviously guilty of gross fraud is immaterial. The Amendment provides no exception in its guaranty of protection. Its great purpose was to protect the citizen against oppressive tactics. Its benefits are illusory indeed if they are denied to persons who may have been convicted with evidence gathered by the very means which the Amendment forbids. Cf. *Weeks* v. *United States*, 232 U. S. 383. Its protecting arm extends to all alike, worthy and unworthy, without distinction. Rights intended to protect all must be extended to all, lest they so fall into desuetude in the course of denying them to the worst of men as to afford no aid to the best of men in time of need.

The benefits that accrue from this and other articles of the Bill of Rights are characteristic of democratic rule. They are among the amenities that distinguish a free society from one in which the rights and comforts of the individual are wholly subordinated to the interests of the state. We cherish and uphold them as necessary and salutary checks on the authority of government. They provide a standard of official conduct which the courts must enforce. At a time when the nation is called upon to give freely of life and treasure to defend and preserve the institutions of democracy and freedom, we should not permit any of the essentials of freedom to lose vitality through legal interpretations that are restrictive and inadequate for the period in which we live.

[9] It also appears that the Government agents overheard Shulman's end of some outside telephone conversations.